To

HIS HIGHNESS COLONEL SHRI SHAHU CHATRAPATI,
MAHARAJA OF KOLHAPUR,
G.C.S.I., G.C.I.E., G.C.V.O., LL.D., M.R.A.S.

THE ILLUSTRIOUS DESCENDANT OF THE
ILLUSTRIOUS SHIVAJI THIS WORK, THE
FRUIT OF HIS GENEROUS AND PATERNAL
ENCOURAGEMENT, I WITH GREAT
DIFFIDENCE VENTURE TO DEDICATE.

CONTENTS.

infringement and violation of the principles of International Law to subject a Foreign Sovereign to the jurisdiction of the Municipal Courts of the country which he visits either for purposes of travel or on State affairs and a sacrilege to invade the sacred and sacrosanct right of an Independent Sovereign which have been secured to him by the conventions and usages of International Law. He is there as an honoured representative of the dignity and Sovereignty of his nation and carries with him all the rights, privileges, immunities and prerogatives which he enjoys in his own country and his subjection to the authority of the Municipal Courts of a Foreign Sovereign would be inconsistent and repugnant to the Sovereign and independent character of the State from which he hails.

Writers on International Law are at variance with regard to the discussion as to the proper subjects of International Law. Some maintain that the test for determining whether a particular State can be a subject of International Law and as such can have an International existence to claim the recognition at the Bar of International Justice is that it must be Sovereign in the absolute sense. The term Sovereignty was first introduced and defined by the great French jurist Bodin in his "De la Republique" in 1577 as "The absolute and perpetual power within a State." A Sovereign according to him is above positive law. This conception of Sovereignty was further elaborated by Hobbes in his celebrated Levia than who maintained that the Sovereign was a supreme authority even in religious matters and was to all intents and purposes omnipotent. It was in the eighteenth century that a distinction was sought to be made between an absolute and full Sovereignty and relative and half Sovereignty. Absolute and full Sovereignty was attributed to those monarchs who enjoyed an unqualified independence within and without their States; Relative and half Sovereignty was attributed to those monarchs who were in various points of eternal and foreign affairs of State more or less dependent upon other monarchs. It was J. J. Moser, who first introduced the term of semi-Sovereign State to describe States, possessing some of the attributes of

Sovereignty. *Not full Sovereign States* are those that are under the Suzerainty or under the Protectorate of another State. The paramount power upon which such half Sovereign States are either absolutely or for the most part *internationally dependent* are called the Suzerain States. Suzerainty is by no means Sovereignty if it were the half Sovereign States could not be Sovereigns even in their domestic affairs. They could never have any international relation whatever of their own. Hence Suzerainty is a kind of international guardianship since the protected State is either absolutely or mainly represented internationally by the Suzerain State. But they are not to be considered as mere portions of the Suzerain State, for Suzerainty is a term applied to certain international relations between two Sovereign States, whereby one while retaining a more or less limited Sovereignty acknowledges the Supremacy of the other State.

In the light of what is stated above, the consideration of the position of the Native States of India in the scale of Nations will be highly intelligible and thoroughly interesting. The ominus notification issued by the Governor-General in Council on August 21, 1890, with reference to the Manipur Case published his view that the principles of International Law have no bearing upon the relations between the Government of India as representing "The Queen Empress on the one hand and the Native States under the Suzerainty of Her Majesty on the other." We question the authority of such a notification which deprives the Crowned Princes of India of their fundamental rights which have been vouchsafed and granted to them by that Law of nature and reason and constitutes a serious menace to the principles of International Law and liable to be questioned at a future Conference of Nations when the States will demand their legitimate rights. No human government on earth by legislation, notification or otherwise can profane the shrine of International Law wherein States of the world pay their humble homage and receive protection. The fabric of International Law which has grown up spontaneously as embodying the accumulated wisdom

and experience of ages is too sacred for human hands and it would be nothing short of a sacrilege to pull it down. International Law recognises no territorial distinctions: it knows no geographical limits; it applies to all; it is not confined within the narrow precincts of the European Commonwealth, but shelters heads of different States. All States are equal in the eye of International Law.

The Native States of India are bound by some treaty obligations with the paramount power by which they have voluntarily surrendered certain attributes of external Sovereignty for the common benefit and are in subordinate alliance with the Suzerain authority. Before the advent of the British Rule it is admitted on all hands that Native Rulers of India were independent of each other with complete internal and external Sovereignty, subject only to International etiquette. The British Government which inherited vast and magnificent House of the Moghals came as time advanced in contact with these Rulers by concluding political treaties and alliances. These Native Princes of the present day are the repositories of their ancient power and dignity and nothing has in the interim transpired to compromise their position; on the contrary the Queen Empress by Her Gracious proclamation as solemnly assured "We shall respect the Rights, Dignity and Honour of Native Princes as Our own." Although they have placed themselves to a certain extent under the protection of the Paramount Power they have not lost their international existence in matters of personal privileges which International Law allows. Indian Princes therefore in visiting a foreign country and travelling through it apart from the ceremonial honours to be paid to them are entitled to exemption from jurisdiction, Civil or Criminal, of the Municipal Court of that country. In view of the matter dicussed above the only practical point for us to consider is how far the Princes of India are amenable in the civil and criminal jurisdiction of British Courts. As for the civil jurisdiction of the British Indian Courts the law is settled by the provisions of the Civil Procedure Code.

The question of criminal jurisdiction presents a little difficulty. There are two enactments dealing with the Criminal Law of British India, *i.e.*, the Indian Penal Code and the Criminal Procedure Code, one dealing with the substantive law of crimes and the other with procedure. The Indian Prince can claim exemption on various grounds. Firstly, prerogatives extended by the fundamental laws of nations; secondly according to the fiction created by international writers that a Foreign Sovereign while passing through or temporarily residing in a foreign country though physically and corporeally within is morally without it. Finally the Indian Government has no authority whatsoever to legislate for people who are not subjects of His Majesty. The law passed by the Indian Legislature can have no binding obligation and force on any foreign subject except when he commits an offence within British India and is found there. Can the Ruling Princes who passed or temporarily reside within British India be subject to British jurisdiction? The person of a Foreign Prince is not the person as contemplated by Section 2 of the Indian Penal Code, he neither being a British subject nor a natural person, but being a juridical person representing the Power, Dignity and all the Sovereign attibutes of his own Nation and going into the another State under the permission which (in time of peace) is implied from the absence of any prohibition.

To conclude this rather long drawn introduction we will accentuate on the salient features of the subject dealt with in the present book. We have seen that the status of the Indian Princes has a topical interest at the present moment. We have observed that the Princes are bound to exercise a growing influence on the politics of this country. We have noted the fundamental importance of an intelligent understanding of the precise relations of Indian Princes with the British Raj: we have expressed our surprise at the lack of definite information obtainable on the subject, and yet whatever material we have gathered we hasten to place it before the reading public.

THE PRINCES OF INDIA.

"*The Laws of England*," BY THE EARL OF HALSBURY, Vol. I.

WHO MAY SUE AND BE SUED.

IN GENERAL.

Any Person may sue or be sued.

The general rule of law is that any person, natural or artificial, may sue and be sued in the English Courts.

THE CROWN.

No action against Crown.

Though the Sovereign may, if he see fit, sue a subject in his own Courts, no suit can be maintained against him in such Courts by a subject, for it is a maxim of our law that "The King can do no wrong."

Tort committed by servant of the Crown.

If the act complained of by a subject be in the nature of a personal tort, his remedy is against that servant of the Crown who actually committed or authorised it, for as such act even if committed by the King personally could not in law be attributed to him so it must be assumed that he did not authorise its commission by one of his servants.

FOREIGN SOVEREIGNS AND GOVERNMENTS.

Not liable to be sued.

Foreign Sovereigns or States may enforce their private rights by action in our Courts; but they cannot be sued therein against their will. As a consequence of that principle of International Law which regards every Sovereign State as absolutely independent and of the international comity which induces every Sovereign State, to respect the independence and dignity

of every other Sovereign State, it is a well-settled rule of our law that our Courts *will not exercise by their process jurisdiction over the person of any independent ruler of even the smallest State or country* (*a*). This is so even if he is within their territorial jurisdiction perfectly incognito (*b*). The public property of a Sovereign State (*c*) and the private property of a Sovereign ruler (*d*) are protected by the same principle from arrest in an action *in rem*.

May sue and be counterclaimed against.

It would seem, however, that where a foreign Sovereign is the plaintiff a defendant may file a cross-claim of a character consistent with our practice (*e*); and a foreign Sovereign may be named as defendant in order to give him notice of a claim which the plaintiff makes to funds in the hands of a third party or trustee over whom the Court has jurisdiction (*f*).

Waiver of Right.

The privilege may be waived (*g*), but only by an international submission to the jurisdiction, as for example, by entering an

(*a*) The Parlement Belge (1880) 5 P. D. 197. A certificate from the Foreign or Colonial Secretary as to independence of the foreign ruler is conclusive with respect thereto [Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149, disapproving. The Charkieh (1873) L. R. 4 A. & E. 59].

(*b*) Mighell *v.* Sultan of Johore, *supra*.

Though a King be in a foreign country, yet he is judged in a law to be a King there [Calvin's Case (1609) 7 Co. Rep. 15 b].

(*c*) Public property, *e.g.*, public ships of war, whether armed [The Prince Frederick (1820) 2 Dods 451] or unarmed [The Thomas A. Scott (1864) 10 L.T. 726], sbells [Vavasseur *v.* Krupp (1878) 9 Ch. D. 351], mail ships [The Parlement Belge, *supra*] and all public vessels belonging to foreign rulers in their public capacity. [The constitution (1879) 4 P. D. 39]; [The Jassys (1906) P. 270], even if partly used for trading purposes (The Parlement Belge, *supra*).

(*d*) The Parlement Belge, *supra*; Vavasseur *v.* Krupp, *supra*.

(*e*) South African Republic *v.* La Compagnie Franco-Belge du Chemin de Fer du Nord (1897) 2 Ch. 487; Strousberg *v.* Republic of Costa Rica (1881) 44 L T. 199; [Priolea *v.* United States of America] (1867) 36 L. J. (Ch.) 36; [Rothschild *v.* Queen of Portugal] (1839) 3 Y. & C. Eq. 594; Wadsworth *v.* Queen of Spain (1851) 17 Q. B. 171; [Duke of Brunswick *v.* King of Hanover] (1844) 6 Beav. 1; [Hettihewage Siman Appu *v.* Queen's Advocate] (1884) 9, App. Cas. 571.

(*f*) See note (*e*), *supra*.

(*g*) Mighell *v.* Sultan of Johore, *supra*. See also Gladstone *v.* Musurus Bey (1862), 32 L. J. (ch) 155.

appearance with knowledge of the facts (*h*); and it has been said that even though there has been a submission, a foreign power does not waive the right of removing its property (*i*).

"*The Laws of England*," BY THE EARL OF HALSBURY, Vol. VI.

GENERAL PRINCIPLES OF JURISDICTION.

Actions in Personam.

The English Courts have jurisdiction (subject to the exceptions referred to below) to entertain an action in personam against any person who is within the jurisdiction at the time when the writ in the action is served upon him, however transitory his sojourn in England may be.

Foreign Sovereigns, etc.

On the other hand the English Courts have no jurisdiction against foreign Sovereigns and diplomatic representatives of foreign Sovereigns unless such persons submit to the jurisdiction nor will they entertain in action, whether of contract or of tort, which involves directly or indirectly the question of title to foreign immoveables, although in certain circumstances an action will lie in England respecting such foreign immoveables where no question of title is concerned.

"*The Laws of England*," BY THE EARL OF HALSBURY, Vol. X.

Status.

The precise status of any Native State and its relations to the British Government are determined only in part by the treaties that may have been entered into with its Chief, or by the Sanads (or patents) that may have been granted to him. In addition to such documentary evidence there exists a general body of principles and rules which express the paramount authority of the Crown and at the same time limit the Sovereignty of every Ruling Chief; and from the nature of the case, the final inter-

(*h*) Mighell *v.* Sultan of Johore, *supra*. An unauthorised appearance by an agent is not sufficient (The Jassy, *supra*).
(*i*) Vavasseur *v.* Krupp, *supra*

pretation of these principles and rules rests with the British Government.

Subordinate Sovereignty.

Only certain attributes of Sovereignty belong to the Native States. For example they possess no international character either as against foreign powers or as among themselves.

On the other hand, the large States, such as Hyderabad and Baroda, possess certain of the recognised powers of Sovereignty. The Chiefs conduct every department of internal administration in their own name, and without interference except in the case of gross mis-government. *Supreme authority—executive, legislative and judicial—is vested in their persons, which are not subject to the jurisdiction of any British Court, civil or criminal.* The exercise over their own subjects, the powers of life and death, of levying taxes, of enlisting troops, of coining money, of issuing postage stamps.

Certain Native Rulers have consented to restrict or abandon some of these powers, out of consideration for the common interest of the Empire; and in all cases the paramount power exercises supervision through a Resident or Political Agent, whose advice in the last resort has the force of a command.

The Native or Feudatory States, from the constitutional point of view, lie entirely outside British India. They vary extremely in origin, in history, in area and in political power; but all alike possess certain attributes of Sovereignty, and all alike are under the suzerainty of the Crown. Their number is approximately 675, though some of these consist of no more than a single village. Their total area is about 824,000 square miles, and their total population about 68,000,000 souls.

Occasions have arisen when it has been found necessary to arraign Chiefs for heinous crimes before a specially constituted tribunal or to depose them for persistant misconduct and disloyalty or even to break up the integrity of a Native State. But since the classification that followed the Mutiny of 1857, the theory of annexation by "lapse" has been disavowed, succession

by adoption in default of natural heirs has been universally granted, no territory has been compulsorily transferred from Native to British Rule, and the status of a Ruling Chief is secure.

While every Native State possesses some mark of independence, in that it is not subject to ordinary British Law, the degree of authority actually exercised by the Ruling Chief varies very considerably.

British jurisdiction comes under two heads :—

(1) Legislative enactments.

(2) Executive orders of the Governor General in Council.

By series of Acts of Parliament, the Indian legislature has been expressly empowered to make laws—

(1) For all servants of the Government of India within Native States.

(2) For all British subjects within Native States, whether in the service of the Government or not.

(Vol. IX.)

By the comity of nations a reigning Sovereign of another State is treated as exempt from the criminal as well as the civil jurisdiction of all other countries. (Wheaton International Law, 4th ed., page 158 ; the Parlement Belge (1880) 5 P. D. 197 C. A. ; Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149 C. A.)

"*The Laws of England,*" BY THE EARL OF HALSBURY, Vol. XXVII.

NATURE AND CLASSIFICATION OF TORTS.

Tort a wrong or breach of duty.

" Person " as here used includes every person recognised by the law as capable of owing a duty to some other person and therefore capable of committing a breach of such duty. It includes, therefore, not only single individuals and bodies corporate, but also all persons associated together for any purpose which may involve a duty to other persons. Thus it may include public bodies and official companies, trade unions and persons

acting by means of or on behalf of other persons, provided that they are so associated that the duty owed or the act committed by the one person or set of persons involves the responsibility of the other person or set of persons; see pp. 484 *et seq.*, post. The term also includes not only any British subject but also when the act is committed in England or is not justifiable where it is committed and is actionable in England, every person whatever his nationality (see title Conflict of Laws, Vol. VI) but it does not include a foreign Sovereign State (see title Conflict of Laws, Vol. VI.)

" *Encyclopædia of the Laws of England*," BY A. WOOD RENTON. Vol. V.

EXTERRITORIALITY; EXTRA-TERRITORIALITY.

The authority of a State within its own territory is absolute and exclusive. This admits, however, of a certain number of exceptions, comprehended in International Law under the fiction of extra-territoriality, or now, more commonly, exterritoriality, a word which is neither exhaustive nor correct, but which in the absence of a better one has acquired in the currency of International Law a pretty well-defined meaning.

The term has been stated to have been first used by Lord Stowell, who, in one of his judgment, spoke of an " extra-territorial community " formed by Europeans in Asiatic States. See, however, Grotius, who refers to diplomatic agents as *Quasi-Extra-territorium* (De Jur. B. ac P. ii. c. 18, s. 5).

The persons and things in favour of whom and to which the fiction applies are (1) the Chiefs of States, who are assumed to represent their nation in the highest degree; (2) diplomatic agents and their *personnel* who are officially received as representatives of their States; (3) consuls, etc.

The privilege is not unlimited. The right of entrance into foreign territory on which the privilege is founded is one dependent on a comity which circumstances may abridge. Thus for reasons of State a Sovereign may have the permission refused to

him to set foot on a foreign soil, and much more is the like true of ships and armies (Woolsey, page 101).

Foreign Sovereign.

The position of a foreign Sovereign was gone into pretty fully in Mighell *v.* Sultan of Johore, in which it was held that the Courts in this country have no jurisdiction over an independent foreign Sovereign unless he submits to the jurisdiction in the face of the Court. Therefore, if a foreign Sovereign resides in England and enters into a contract under an assumed name, he is not liable to be sued for a breach of the contract. A certificate from the Foreign Colonial Office was deemed conclusive as to the status of such a Sovereign [(1894) 1 Q. B. 149]. Wills, J., distinguishing this case from the Duke of Brunswick *v.* King of Hanover (1844) 6 Beav. 1 ; 2 H.L. 1) stated that—

The ground upon which the immunity of Sovereign rulers from process of the Courts is recognised by our law, is that it would be absolutely inconsistent with the status of an independent Sovereign that he should be subject to the process of a foreign tribunal. It has been attempted in some cases to say that the Sovereign may lose his immunity and privileges by laying down his character as a Sovereign and entering into trading transactions as a private person in another country. We have been referred to certain dicta of authors of treaties on International Law. One of those dicta suggests that if an independent Sovereign ruler comes into his country *incognito*, he is amenable to the jurisdiction of our Courts, although he chooses to claim his immunity. The dictum has never been acted upon, and the suggesion has probably arisen from a loose way of looking at the case ofthe Duke of Brunswick *v.* King of Hanover. That was a very peculiar case, because the King of Hanover was not only a foreignSovereign, but also a British Peer. He was sued in his characer of a British Peer, and it was alleged that the transactions in respect of which it was sought to make him amenable to the jurisdiction of the Courts here had nothing to do with his

character of King of Hanover. It was said by the Court that inasmuch as he had two distinct capacities; one of which did not touch his character and attributes as a ruling Sovereign, he might be sued in the Courts of this country in respect of transactions done by him in his capacity as a subject. But the Sultan of Johore is in no sense a British subject.

In the same case Lord Esher, M.R., quoting from a previous judgment (The Parlement Belge), said that the principle to be deduced from the cases was "that as a consequence of the absolute independence of every Sovereign authority and of the international comity which induces every Sovereign State to respect the independence and dignity of every other Sovereign State, each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any Sovereign or ambassador of any other State or over the public property of any State which is destined to public use, or over the property of any ambassador, though such Sovereign, ambassador, or property be within its territory, and therefore, but for the common agreement, subject to its jurisdiction" (The Parlement Belge, 1880, 5 P. D. 197).

But this apparently does not apply to a counter-claim brought against a plaintiff State, judging by the dicta of the judges in South African Republic *v.* La Compagnie Franco-Belge du Chemin de Fer du Nord. In this case a fund arisen from debentures issued by the defendant company and guaranteed by the South African Republic was by arrangement lodged with two trustees, one nominated by the Republic and the other by the company, pending the completion of a railway which the company was making under a concession by the Republic. The nominee of the company having died, the Republic brought an action in England, the fund being in this country, to have a new trustee appointed and the fund paid to the two trustees. The company put in a defence and counter-claim, setting forth that they had sustained heavy loss through an alleged libellous letter written in the name of the Republic. Lindley, L.J., said :

I treat this as an action by a foreign Government which

submits to the jurisdiction of the Court as regards all matters properly appertaining to the action so brought. Amongst such matters are the questions which, according to our practice, can be properly raised under a counter-claim.

"*Commentaries.*" BY BLACKSTONE

OF THE ROYAL PREROGATIVE.

Under every monarchical establishment it is necessary to distinguish the prince from his subjects not only by outward pomp, but by ascribing to him certain qualities distinct from and superior to those of any other individual. The law therefore ascribed to the Sovereign in his political character certain attributes of a transcendent nature which enable him to carry on the business of government.

The law ascribes to the King the attribute of Sovereignty or pre-eminence. He is said to have imperial dignity; his is said to be an empire and his Crown imperial. Hence it is that no action can be brought against the Sovereign even in civil matters, because no Court can have jurisdiction over him; and that the person of the Sovereign is sacred even though the measures of his reign the tyrannical; for no jurisdiction upon earth has power to try him; much less to condemn him to punishment.

Are then the subjects of England without remedy if the Crown should invade their rights either by private injuries or public oppressions? Certainly not; for the law provides a remedy in both cases.

As to private injuries; if any person has a just demand against the Crown he must petition him in one of his Courts, where his judge will administer right as a matter of grace though not upon compulsion. For the end of such action is not to compel the prince to observe the contract but to persuade him. And as to personal wrong it is well observed by Locke, "the harm which the Sovereign can do in his own person not being likely to happen often not to extend itself far; nor being able, by his single strength, to subvert the laws, nor oppress the body of the

people, the inconveniency, therefore, of some particular mischiefs, that may happen sometimes when a heady prince comes to the throne are well recompensed by the peace of the public and the security of the Government, in the person of the chief magistrate being thus set out of the reach of danger ".

As to cases of ordinary public oppression where the constitution itself is not attacked the law also assigns a remedy. For as a Sovereign cannot misuse his power without the advice of evil councillors : the constitution provides by means of indictments and parliamentary impeachments that no man shall dare to assist the crown in contradiction to the laws of the land.

The law ascribes to the Sovereign in his political capacity absolute perfection. The King can do no wrong ; which means firstly that whatever is exceptionable in the conduct of public affairs is not to be imputed to the Sovereign, nor is he answerable for it personally ; and secondly that the prerogative extends not to do any injury ; it is created for the benefit of the people and therefore cannot be exerted to their prejudice.

For the Sovereign is not only incapable of doing wrong, but even of thinking wrong. And therefore if the crown is induced to grant any privilege to a subject prejudicial to the commonwealth or to a private person, the law will not suppose the Sovereign to have meant either an unwise or an injurious action but declares that he was deceived in his grant ; and thereupon such grant is rendered void upon the ground of fraud and practised deception either by or upon those agents whom the crown has thought proper to imploy.

On this same principle there can be on the part of the Sovereign no negligence, or laches and therefore no delay bars his right. *Nullum tempus occurrit regi.* For the law intends that the Sovereign is always busied for the public good, and therefore has not leisure to assert his right within the times limited to subjects. Neither can the King in judgment of law, as King, ever be a minor ; and therefore his grants and assents to acts of parliament are good though he has not attained the legal age of twenty-one. But it has been usual when the heir-apparent

has been very young, to appoint a regent for a limited time; the necessity of such extraordinary provision being sufficient to demonstrate the truth of that maxim of the law that in the King is no minority; and therefore he has no legal guardian.

"*Conflict of Laws*," BY A. V. DICEY.

JURISDICTION OF THE HIGH COURT.
WHERE JURISDICTION DOES NOT EXIST.

The Court has (subject to the exceptions hereinafter mentioned) no jurisdiction to entertain an action or other proceeding against—

(1) any foreign Sovereign;
(2) any ambassador or other diplomatic agent representing a foreign Sovereign and accredited to the Crown;
(3) any person belonging to the suite of such ambassador or diplomatic agent.

An action or proceeding against the property of any of the persons enumerated in this Rule is, for the purpose of this Rule, an action or proceeding against such person.

To the persons enumerated in this Rule might from one point of view, be rightly added the Crown itself, since an action cannot be brought against the Crown nor can an action *in rem* be brought against any ship of the Royal Navy. But the Crown is purposely omitted because proceedings can in effect be under certain circumstances brought in the High Court against the Crown in the form of a petition of right (see especially, Clode Petition of Right, 66—67; Com. Dig. "Action" cap. 1; and (among other cases) Canterbury *v.* Attorney-General (1843) 1 Phillips, 306, 322; Thomas *v.* the Queen, (1174) L. R. 14 Q. B. 31; Rustomjee *v.* the Queen (1876), 1 Q. B. D. 487; 2 Q. B. D. (C.A.) 69.

Comment.

(1) *Foreign Sovereign.*—No action nor other proceeding can be taken in the Courts of this country against a foreign Sovereign, nor can the property of a foreign Sovereign be seized or arrested.

(2) *An Ambassador, etc.*—An ambassador or other diplomatic agent accredited to the Crown by a Foreign State cannot at any rate without his consent be made defendant here in an action either for breach of contract or it would seem for tort nor can his property be seized.

The Court however (simple) has jurisdiction over an ambassador or diplomatic agent of a foreign Sovereign who is not accredited to the Crown but is in England.

(3) *Members of suite, etc.*—The privilege of the ambassador or diplomatic agent extends to "all persons associated in the performance of the duties of an embassy or legation. And if it be once ascertained that the person was treated at the embassy or legation as a member of the same, and employed from time to time in the work of the legation, the Court will not curiously measure the quantum of the services either required from or rendered by him. But the service must be *bona fide*.

Illustrations.

1. *X* is a foreign Sovereign. *X* while on a visit to England incurs debts. The Court has no jurisdiction to entertain an action for the debts.

2. *X* is a foreign Sovereign. He is living in England *incognito* under the name of Y. Whilst in England and passing as a British subject he makes a promise of marriage to *A*, an English woman, who has no knowledge that *X* is a foreign Sovereign. *X* breaks his promise of marriage. *A* brings an action against *X*, who pleads that he is a Sovereign. The Court has no jurisdiction to entertain the action.

3. An unarmed packet-boat belonging to the King of Belgium, and in the hands of officers employed by him, carries the mails from Belgium to England. The ship also carries merchandise. She negligently runs down an English boat in Dover Harbour. The Court has no jurisdiction to entertain an action against the ship or to give any redress whatever.

4. *X* is the ambassador accredited to the Crown by a foreign State. *X* is indebted to an English Company for a call due on

shares. The Court has no jurisdiction to entertain an action for the amount of the call.

Comment.

A foreign Sovereign can submit to the jurisdiction of the Court. "Suppose" asks Maule, J., foreign sovereign in this country were desirous to have some question decided by the Courts of this Kingdom, could he not do so? This question must clearly be answered in the affirmative.

This submission must be an unmistakable election to submit to the Court's jurisdiction and must take place at the time when the Court is about or is being asked to exercise jurisdiction over him.

"*Commentaries on the Laws of England*," BY HERBERT BROOM, LL.D.

To these several cases in which the incapacity of committing crime arises from a deficiency of the will we may add one more in which the law supposes in incapacity of doing wrong from the excellence and perfection of the person; which extend as well to the will as to the other qualities of the mind. I mean the case of the Sovereign; who by virtue of his royal prerogative, is not under the coercive power of the law (*a*); which will not suppose him capable of committing a folly, much less a crime. We are therefore out of reverence and decency to forbear any idle inquiries as to what would be the consequence if the Sovereign were to act thus and thus; since the law deems so highly of his wisdom and virtue, as not even to presume it possible for him to do anything inconsistent with his status and dignity; and therefore has made no provision to remedy such grievance. But of this sufficient was said in a former volume (*b*), to which I must refer the reader.

"*International Law*," BY L. OPPENHEIM.

Every monarch must be treated as a peer of other monarchs.

(*a*) 1 Hale, P. C. 44. (*b*) *Ante*, Vol. i., p. 292.

whatever difference in title, rank and actual power may be between them.

As regards, however, considerations due to a monarch abroad from State on whose territory he is staying in time of peace and with consent and knowledge of the Government details must necessarily be given. The considerations due to him consist in honours, inviolability and exterritoriality.

1. In consequence of his character as a Sovereign his home State has a right to demand that ceremonial honours be rendered to him, the members of his family and the members of his retinue.

2. As his person is sacrosanct, his home State has right to insist that he be afforded special protection as regards personal safety, the maintenance of personal dignity and the unrestrained intercourse with his Government at home. Every offence against him must be visited with *special severe penalties. On the other hand he must be exempt from every kind of criminal jurisdiction.* The wife of the Sovereign must be afforded the same protection and exemption.

3. He must be granted the so-called exterritoriality conformably with the principle '*Par in Parem, Non habet imperium*' according to which one Sovereign cannot have any power over another Sovereign. He must, therefore, in every point be exempt from taxation, &c., and likewise from civil jurisdiction except when he himself is the plaintiff.

The retinue of the monarchs abroad enjoys exterritoriality.

A State in its normal appearance does possess independence all round, and therefore, full Sovereignty. Yet there are States in existence which certainly do not possess full Sovereignty, and are therefore named not full sovereign States. All such States are under the suzerainty or protectorate of another State. All of them possess supreme authority with regard to a part of the tasks of a State, whereas with regard to another part they are under the authority of another State. Hence it is that the question is disputed whether such not full Sovereign States can be International Persons and subjects of the Law of Nations.

That they cannot be full, perfect and normal subjects of International Law, there is no doubt. But it is wrong to maintain that they can have no international position whatever and can never be members of the Family of Nations at all. If we look at the matter as it really stands, we observe that they actually often enjoy in many points the duties of International Persons. They often send and receive diplomatic envoys or at least consuls, they often conclude commercial or other International Treaties, their monarchs enjoy the privileges which according to the Law of Nations the Municipal Laws of the different States must grant to the monarchs of Foreign States. No other explanation of these and similar parts can be given except that those not full Sovereign States are in some way or other International Persons and subjects of International Law. Such Imperfect International Personality is of course an anomaly, but the very existence of States without full Sovereignty is an anomaly. Whatever may be said about all the States without full Sovereignty is that their position within the Family of Nations, if any, is more or less overshadowed by other States. But they have partial International Personality.

The distinction between States full Sovereign and not full Sovereign is based upon the opinion that Sovereignty is divisible, so that powers connected with Sovereignty need not necessarily be united in one hand. But many jurists deny the divisibility of Sovereignty and maintain that a State is either a Sovereign or not. They deny that Sovereignty is the characteristic of every State and of the membership of the Family of Nations. It is therefore necessary to form the conception of Sovereignty more closely. And it will be seen that there exists no conception the meaning of which is more controversial than that of Sovereignty.

The meaning of Sovereignty in the sixteenth and seventeenth century.

The term Sovereignty was introduced in Political Science by Bodin in his celebrated book, "De la Republique" which appeared in 1877. He defined Sovereignty as "the absolute

and perpetual power within the State." In the 17th century Hobbes went even beyond Bodin, maintaining that a Sovereign was not bound by anything and had a right to everything even religion.

"*International Law*," BY WHEATON.

"The world being composed of distinct Sovereignties possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other and by an interchange of those good offices which humanity dictates and its wants require, all Sovereigns have consented to a relaxation in practice, under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which Sovereignty confers."

"The person of a Foreign Sovereign going into the territory of another State is by the general usage and comity of Nations, exempt from the ordinary jurisdiction. Representing the power-dignity and all the Sovereign attributes of his own Nation, and going into the territory of another State under the permission which (in time of peace) is implied from the absence of any prohibition he is not amenable to the Civil or Criminal jurisdiction of the country where he temporarily resides."

"All the Sovereign States are equal in the eye of International Law whatever may be their relative power. The Sovereignty of a particular State is not impaired by its occasional obedience to the command of other States or even the habitual influence exercised by them over its councils. It is only when this obedience or this influence assumes the form of express compact, that the Sovereignty of the State inferior in power is legally affected by its connection with the other. Treaties of equal alliance contracted between Independent States, do not impair their Sovereignty. Treaties of unequal alliance guarantee mediation and protection may have the effect of limiting and qualifying the Sovereignty according to the stipulations of the treaties. States which are thus dependent on other States in respect to the exercises of certain rights essential to the

perfect external Sovereignty have been termed semi-Sovereign States.

"*International Law*," BY HALL.

A Sovereign while within Foreign Territory possesses immunity from all local jurisdiction in so far and far so long as he is there in his capacity of a Sovereign. The immunities which have been considered are prompted by considerations partly of courtesy and partly of convenience so great as to be almost equivalent to necessity. When States are identified with their Sovereigns, and the relations of States are in great measure personal relations of individuals. Considerations of courtesy must naturally be prominent, supposing reasons of courtesy to be disregarded, immunities would still be required upon the ground of practical necessity. If a Sovereign, while in a Foreign State, were subjected to its jurisdiction, the interests of its own State might readily be jeopardised by the consequences of his position. *He cannot therefore be proceeded against either in ordinary or extraordinary Civil or Criminal tribunals.* He is exempted from payment of all dues and taxes, he is not subjected to police or other administrative regulations, his house cannot be entered by the authorities of the State, and the members of his suite enjoy the same personal immunity as himself. If he commits acts against the safety or the good order of the community, or permits them to be done by his attendants the State can only expel him from its territory. The privilege of a Sovereign consequently secures his freedom from all assertion of Sovereignty over him or over anything or anybody attached to him in his Sovereign capacity. If a crime is committed by a member of his suite the accused person cannot be tried and punished within the precincts occupied by him, neither he, nor his judges are able to take cognizance of an action brought by a foreigner against persons in attendance on him, and if there is nothing to prevent judgment being given in questions arising between the latter alone, the decision cannot, at any rate, be enforced.

Where, as occasionally happens, a Sovereign has a double

personality, where that is to say he for some purposes, assumes the position of a private individual, or where while remaining Sovereign in his own country, he is a subject elsewhere, he is amenable to foreign jurisdiction in so far as he is clothed with a private or a subject character. As, however, in such cases he is only accidently or temporarily a private person, and as he properly remains the organ of his country, he has a right of taking up his public capacity and jurisdiction over him becomes inconsistent with his view to the interests of his State. He recovers the privileges of a Sovereign at will by declaring his identity.

If, however, a Sovereign appeals to the Courts of a Foreign State or accepts their jurisdiction "he brings with him no privileges that can displace the practice as applying to other suitor.

"*International Law*," BY PHILLIMORE.

"A State may place itself under the protection of another State with or without losing its international existence."

"States which cannot negotiate nor declare war or peace with other country without the consent of their protector are only mediate and in a subordinate degree considered as subjects of International Law. In war they share the fortunes of their protectorates, but they are for certain purposes and certain limitations, dealt with as independent moral persons especially in questions of comity. States of this kind are some times called semi-Sovereigns."

"*The second class of recognised exceptions which entitled foreigners who are the subjects of them to be considered as morally without, though physically within the territorial limits, relate to Foreign Sovereigns passing through or temporarily residing in the territory of another State. They are held not to be amenable to the jurisdiction of the Civil or Criminal tribunals.* They being permitted by International Law to be considered both as to their own person and effects and as to those of their attendant as being still within their own dominions."

"*International Law*," BY WHARTON.

The world being composed of distinct Sovereignties, possessing equal independence, whose mutual benefit is promoted by intercourse with each other and by an interchange of those good offices which humanity dictates and its wants require all Sovereigns have consented to a relaxation in practice, under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which Sovereignty confers.

The person of a Foreign Sovereign going into the territory of another State, is by the general usage and comity of Nations exempt from the ordinary local jurisdiction. Representing the power, dignity and all the Sovereign attributes of his own Nation and going into the territory of another State under the permission which (in time of peace) is implied from the absence of any prohibition, he is not amenable to the *Civil or Criminal* jurisdiction of the comity where he temporarily resides.

"*The principles of International Law*," BY LAWRENCE.

EXCEPTIONS TO ORDINARY RULES ABOUT JURISDICTION: (1) FOREIGN SOVEREIGNS AND THEIR SUITES.

It will be remembered that when we claimed for a State jurisdiction over all persons and all things within its territory we stated that there were a few exceptions. We will now proceed to enumerate them. First among those who in a foreign country are not subject to ordinary rules come.

Foreign Sovereigns and their Suites.

When the head of a State is visiting a foreign country or travelling through it in his official capacity, not only must all usual ceremonial honours be rendered to him, but *he and his effects are exempt entirely from the local jurisdiction.* He cannot be proceeded against *civilly or criminally and his immunities in this respect are shared by his attendants.* If he

conspires against the State or permits his suite to do any acts against its safety or harbours criminals and refugees in the residence assigned to him he may be requested to leave the territory or in the last resort may be sent out of it, but he cannot be tried and punished within it. He may not however exercise any jurisdiction of his own within the State he is visiting, though he may carry on his ordinary administrative work with regard to home affairs. If any serious and urgent cases arise among his retinue they must be sent home for trial. All immunities vanish should a Sovereign travel incognito as a private person, but he can at any time regain them by appearing in his official character. If the same person should be both ruler and ruled as the late Duke of Albany was Sovereign in Saxe-Coburg-Gotha and subject in England, he would not be allowed to escape from any obligations that might accrue to him while resident in the country in which he was subject by pleading that he was Sovereign in another country. Writers have differed as to whether the President of a Republic is entitled when abroad to the same honours and immunities as a monarch, but the recent visits of Presidents of the French Republic to the Russian Court seem to have settled the question in the affirmative.

"*International Law*," BY WESTLAKE.

The jurisdiction of the Political Officers was conferred on them by British Executive Acts of State and not by Acts of the Indian Legislatures. So, too, various trials of Native Princes and that of the officials have been by special commissions instituted by executive acts.

The constitutional position of a Native Indian State (so-called) appears to be that of a separate part of the dominions of Queen Empress as New South Wales and British India or other such separate parts, having its Local Government vested in its Native Prince subject both to the Sovereign as executive head as well as to the Parliament as legislative head.

It is a position which in the degree of dependence is intermediate to those of a self-governing colony and a *Crown colony*.

The name of Sovereign State is attached to it, but really it is a position of constitutional, though not International semi-Sovereignty.

In the constitutional situation thus presented. British India and the Native States stand in a quassi-foreign relation to one another.

Lord Hastings, the highly authorised expounder, says about treaties with Indian Princes "When they were fresh-minted they represented different policies and different periods," but that "the action of time and customary law has worn them down to a common value."

A Sovereign has double personality where, he for some purposes assumes the position of a private individual and of remaining Sovereign in his own country, he is subject elsewhere, he is amenable to foreign jurisdiction in so far as he is clothed with a private or subject character.

A Foreign Prince enters a military service in foreign country as officer and if he travels *in cognito* he is treated as the private individual whom he appears to be; however in such a case he is only accidentally or temporarilly a private pe son and as he remains properly the organ of his country he has the right of taking up his public position whenever the exercise of jurisdiction over him becomes inconsistent in his view with the interest of his State. He recovers the privilege of Sovereign at will declaring his identity.

When a Sovereign holds property in a foreign country as private individual the Courts may take cognisance of all questions relating to the property. The properties affected by the results of the proceedings taken in them.

In Wolff and through him Vattel the doctrine of the equality of nations appears in the following form. Being regarded as persons living in a state of nature, nations are naturally equal as men are naturally equal; a small nation is as much a nation as a large one.

The General Rules of International Law apply in their fullness only to Sovereign States like France, United Kingdom. . .

and between Sovereign States (and natural persons) International Law recognises groups of the latter not on an equality with the former of which Bulgaria may be taken as an example and which may be called as semi-Sovereign though they may and do differ in their particular condition and rights. Independence, like every negative, does not admit of degrees. Sovereignty is partible. A group of men is fully Sovereign when it has no constitutional relations making it in any degree dependent on any other group. Thus independence and the full Sovereignty of a State are identical, but it would be an abuse of language to speak of semi-Sovereignty as partial independence. The constitutional relations between a semi-Sovereign State and the State on which it is dependent may exclude the former from any public intercourse with foreign State.

The States which do not enjoy independence while at the same time possessing certain foreign relations, because the constitutional tie which limits their Sovereignty is internationally respected, are semi-Sovereign internationally and constitutionally and the dealings between them and Foreign States which their constitutional limitation permits are conducted on the basis of ordinary International Law so far as applicable.

LORD WELLESLEY, June 2, 1808.

It has never been in the contemplation of this Government to derive from the charge of protecting and supporting His Majesty the privilege of employing the royal prerogative as an instrument of establishing any control or ascendency over the States and Chieftains of India, or of asserting on the part of His Majesty any of the claims which in his capacity of Emperor of Hindustan. His Majesty may be considered to possess upon the Provinces originally composing the Mogul Empire.

Lord Wellesley in Oudh 1801 intervened though taking the State as an independent one.

The intervention on the ground of misgovernment to which Wellesley had recourse was not founded on any question about Oudh's possessing that (independent) character, but on the

principle of International Law which was necessary to apply to independent States of India.

The Native States have since lost the character of independence not through any epoch-making declaration of British Sovereignty, but by a gradual change in the policy pursued towards them by British Government.

The Native Princes who acknowledged the suzerainty of the United Kingdom have no international existence.

"*The Native States of India*," BY SIR W. LEE WARNER, The Law Quarterly Review. (A Rejoinder).

Any one who enters the field of controversy with Dr. Westlake must feel that he is partially disarmed before he can come to close quarters. His adversary's established reputation as a master of International Law, his powers of lucid exposition, and his delicate courtesy are advantages not to be ignored, and yet when he bids the protected Princes of India to stand off the forbidden ground of International Law and walk thankfully into the spiders' parlour of constitutional law, a note of warning seems called for.

At the outset it is well to remove two possible prejudices which a reference to the Manipur proclamation and to an unguarded expression in my own book may create. It is quite true that, ton August 21, 1890, the Governor-General in Council published his view that, the principles of International Law have no bearing upon the relations between the Government of India as representing 'the Queen-Empress on the one hand and the Native States under the suzerainty of Her Majesty on the other'. But happily the Government of India have never acted upon that unqualified denial of justice according to International Law, and did not so act in the case before them. No principle of International Law was even cited in the Manipur case. A protected Prince had been driven from the throne on which he sat with the sanction and recognition of the British Government and the public peace of the empire had been broken. When a British Force entered Manipur for the restoration of order the

Regent and others resisted, committing murder and opposing those who came to restore the Maharaja's authority as in duty bound by the terms of his subordinate alliance with the Government of India. The enemies of public tranquillity were defeated and tried by a special commission whose authority they disputed, pleading that they were not British subjects triable by British Courts for offences committed outside British India. They were, however, not tried by any Court deriving its authority from the Municipal Law of British India. They had appealed to force, and they took the consequences of defeat, although the victor gave them a fair trial. Thus their condemnation and punishment had no bearing on International Law, and no inference could be drawn from it to the effect that in normal circumstances the principles of International Law were inapplicable to Manipur. *Inter armer cessant leges* Another point is made by Dr. Westlake of a sentence (p. 259 of the 'Native States') which runs as follows: 'For all international purposes, at any rate, the whole empire, including the protected States united to it, must be regarded as one nation represented by the British Government.' The chapter from which this extract is detached deals with 'obligations in external affairs, and the sentences which precede and follow the extract show clearly that the 'international purposes' referred to were connected with foreign affairs. In the former sentence it is observed that it would be impossible to allow so many as 261 important States to enter into their own transactions with foreign powers.' And in the latter sentence reference is made to an Act of Parliament which recites the fact that the several princes have no connections, engagements, or communications with foreign powers, the passage, then, to which Dr. Westlake turns as one 'which, if literally pressed, contains my whole case, must not be torn from the context. The sentence might have been more cautiously expressed; but it merely contains an admission limited to external relations, that the Native States have lost by their own consent right of negotiation with other powers. This arm of an able-bodied Sovereign is paralysed

and useless 'for all international purposes,' since the protecting British Government stands forth on behalf of every Native Prince as his representative in all transactions with other nations, That the loss of this single right does not destroy all international life in the Native States is argued out in other parts of my book, being bases on the dictum of Maine that Sovereignty is a term which in International Law indicates a well-ascertained assemblage of separate powers and privileges. The rights which form parts of the aggregate are specifically named by the publicists who distinguish them as the right to make war or peace, the right to administer civil and criminal justice, the right to legislate, and so forth. A Sovereign who possesses the whole of these is called an Independent Sovereign, but there is not nor has there ever been, in international laws, anything to prevent some of these rights being lodged with one possessor and some with another.'

If then the trial of the main issue may proceed on its merits without going further into the allegation that the Government of India and the author of the Native States of India have themselves given away the case for an international tie, the first point is to examine Dr. Westlake's definition of International Law. Into the rival claims of 'law' or 'positive international morality' it is not necessary to enter. Dr. Westlake writes as English Law is the Law of England and French Law that of France, so International Law is that of a certain part of the world, which comprises, if it is not exclusively composed of Europe, all nations outside Europe, but of European blood, and Japan.' I can understand a claim to limit the area of International Law strictly to the nations of Christendom in which it originated, but writing with deference and respect for so eminent an authority I am disposed to question this territorial curtailment of the domain of International Law. Why should the reign of law under any category, whether natural, international, or municipal, be excluded from the greater part of the inhabited world, since presumably a just Providence has appointed all creation for its dominion? Sovereign States in India

have their difference which they wish to adjust by rules and principles of law without recourse to arms or violence, and, as it seems to me, they present a legitimate field for the reign of International Law. I should be tempted to define that Law as the understanding between civilized nations or States regarding the rules by which their differences should be settled in accordance with principles that, being applicable to certain existing acts, must constantly grow and adjust themselves to new developments, so that appropriate rules and formula must be devised as new facts arise. International Law, I venture to think knows no geographical limits, it connotes relations between States exercising certain Sovereign powers independently of one common legislature, and it rests upon their consent to avoid strife and avert injury by recourse to certain rules and principles of justice for the peaceful settlement of certain definite conflicting rights and interests. It is immaterial whether the consenting States possess entire independence and all the unimpaired attributes of Sovereignty. What is material is that on the one hand there should be no common subjection to a common legislature, capable of making Municipal Laws binding upon the consenting States and their subjects, and on the other hand a conflict of rights and interests which the States concerned could not in the absence of International Law settle otherwise than by appeal to force so long as boundary disputes, succession questions, fiscal wars, and other causes of quarrel need peaceful adjustment by legal methods, the field is open for International Law, although other internal disputes affecting foreign owners may be settled by other methods through a paramount power it is necessary, in my humble opinion, that there should be equality of Sovereignty or even of internal autonomy in the parts of India, whether British Indian or the States under the suzerainty of His Majesty, over which International Law is to hold its way, so long as the parts concerned agree to the settlement of well defined classes of dispute according to rules and principles of justice which the Municipal Courts of those parts have no power to apply or enforce.

The treaties, agreements and engagements of the British Government with the Native States abound in instances of specific consent given to the adjustment of certain differences by methods of justice which can only be described as International Law, while they are equally explicit as to the exclusion of the Law of British India and as to the incapacity of its Legislative Councils to make laws binding upon the Princes and subjects of the Native States. The Government of India 'weighing matters in the scale of truth and justice' undertakes to adjust certain differences with Indore, it promises to see that the Rao of Kutch shall preserve the right of the Jadeja nobility, or that the Maharaja of Kolhapur shall maintain the privileges of his own feudatory chiefs, it agrees with the Premier Rajput State of Udaipur that 'if by accident a dispute arise with any one it shall be submitted to the arbitration and award of the British Governments,' and so forth. Thus the classes of cases for adjudication are clearly defined by treaty. And how are these treaties interpreted? On every occasion scrupulous regard is asserted for whatever attributes of Sovereignty each State may possess, and for the interpretation of doubtful points rules sanctioned by the International Law of Europe are confessedly applied by the Government. The treaties themselves have been formally accepted by Parliament as binding upon the Crown and nation of the United Kingdom since the transfer of administration took place in 1858. The highest courts of British justice have treated them with the respect due to international obligations for more than a century from January 1793 to 1897. In the former year Lord Commissioner Eyre held that the treaty with the Nawab of Arcot was a treaty between two Sovereigns and consequently not a subject of private municipal jurisdiction.' In the latter year the Lord Chancellor rejected a claim put forward by the Government of India of the right to arrest a fugitive criminal on a railway passing through the territory of the Nizam of Hyderabad. He relied upon a principle of International Law, that 'the authority to execute any criminal process must be derived in some way

or another from the Sovereign of that territory,' holding that 'as the stream can rise no higher than its source,' the British Government had exceeded the authority offered on it by its agreement with the Nizam. A further instance in illustration of the break of constitutional gauge between British India and the Native States is supplied by our treaties with foreign powers, and it is the more noteworthy because, as already shown, the States have lost one great attribute of Sovereign power, namely, over their external affairs. In our commercial treaties it is usual to give and receive full liberty of conscience and free authority for the purchase of property to the subjects of the negotiating powers. These rights can be, and are, readily ensured in British India, but in the Native States there are, limitations and reservations in matters of worship and trade. Accordingly, in the negotiation of such commercial treaties the British Government recognizes the necessity for differential treatment and guarantees in the protected States no larger measures of freedom of contract for the foreigner than that which it is able to secure for its own British subjects.

It is thus evident that parliament, judges, and our diplomatists recognise the Sovereign powers of the protected Princes of India, and their peculiar position outside the constitutional system of British India. If these officials in their working attire regard the protected Princes from the point of view of International Law, it is not unreasonable to appeal for a similar indulgence to the masters of that law. The question is not one of merely academic interest, or the hubbub of terminological dispute. The answer to it must make all the difference in the attitude of the public mind towards the ruling chiefs, and in their confidence in our intentions. First impressions often prejudice conclusions. In private intercourse the manner of address arouses either attention or resentment, and when we approach the solemn (to use the words of Dr. Westlake), 'categorical imperative of the Royal Imperial Government' alarm or trust will be excited by the tone and point of view adopted by him who sits on the throne. An accused who stands

at the bar of natural justice excites little sympathy. He is supposed off hand to have offended against the Law of God, and if the fact is established that he is a pirate or a slave dealer no one is extreme to mark the position of jurisdiction. If again, the offence is one against Constitutional Law, the thought which at once presents itself to the mind is that the settlement concerns a political superior, whether a king or a sovereign number, and his or their subjects who are properly amenable to the laws which their own superior has a right to make. A categorical imperative may be addressed to his subjects by such an authority without interesting other nations. But when International law is invoked, a wider circle is interested, and a large caution is needed by the judge. Consent must be proved, the treaties which embody it must be examined, and watchful self-interest is aroused on all sides lest there should be a precedent for encroachment on the jurisdiction of others. It is the avoidance of any risk of having themselves and their subjects treated as subject to the laws of British India which makes the rulers of Native States cling to the international *status* which they once enjoyed, and which in certain respects is still accorded to them by governments and judges. They have ceased by their own consent to exercise some of the attributes of complete Sovereignty, and they cling more tenaciously to their independence in internal affairs. It is therefore a matter of moment to them that the public mind, so impatient in its moods, should be restrained by every habit of speech and thought which may preserve to them unimpaired the semi-Sovereign rights and privileges which have been guaranteed to them by Acts of Parliament, by Royal Proclamation, and the repeated assurance of Indian Government. In short, tolerant of British suzerainty with all its consequences, and ready to grant by consent, if the occasion demands it, further concessions for imperial needs the protected rulers of Native States value above all other possessions their immunity from the activities and control of the law-making council of British India. They feel a sense of security under the shadow of International Law, by the principles of which

their engagements and d ties may be interpreted instead of by statute; and they dread the 'categorical imperative' of constitutional law. If John Stuart Mill in his inaugural address at St. Andrews on February 1, 1867, correctly described the law of nations as a set of moral rules being 'an application of the maxims of honesty and humanity to the intercourse of States,' their attitude is not unnatural. In so far as my own opinion is of any value, it is well to leave to our allies, who have borne with us the burden and heat of Indian history, the status which they desire one which in the early years of British dominion they most unquestionably enjoyed to the fullest extent, and which the highest tribunals of British judicature still accord to them in respect of the attributes of Sovereignty reserved. to them.

W. LEE-WARNER.

(It seems not easy to test the difference between our two eminent contributors, a difference of attitude rather than of doctrine by bringing it to any definite point. Sir William Lee-Warner would hardly maintain that the Maharaja of Jodhpur is entitled to quote Grotius or Vattel or Calvo to his Resident as an authority binding on the Governor-General in Council. Still less would Dr. Westlake maintain that the Resident can quote Acts and Regulations as authorities binding on the Maharaja. The essential fact seems to be that the relations of the Government of India and the Native States are governed by a body of convention and usage not quite like anything else in the world, but such that in cases of doubtful interpretation the analogy of International Law may often be found useful and persuasive. For the purposes of International Law proper Mewar and the Nizam's dominions have just as much existence as New South Wales or Ohio; that is to say none whatever. Yet the States of the Union are quite commonly called Sovereign, not semi-Sovereign, by American publicists. It is a curious but distinct question whether the rules of intercourse between the Government of India and the Native

States are uniform and systematic enough to be described as some sort of unique *ius commune*.—F. P.)

"*The Native States of India*," BY SIR WILLIAM LEE-WARNER.

The Criminal Law of British India recognises the offence of 'waging war upon the King;' and although the princes of India are not subject to the regular jurisdiction of the British Courts, they have been taught by many examples that resistance to the Royal authority constitutes an act of rebellion.

It must be mentioned here that some restriction upon the acquisition of lands as well as upon their alienation, are imposed upon the Chiefs of India. In so far as such fresh lands are bought at the expense of other Native States, they are governed by the principles already explained since Rulers of State cannot part with the public property. But where Ruling Chiefs seek to acquire property by purchase in British territory, the danger is apprehended that the Chief by such acquisition will place himself under British jurisdiction and so subject himself to complications which may prejudice his rights and privileges as a foreign Sovereign.

"*Law of Torts*," BY SIR JOHN SALMOND.

A foreign Sovereign is not liable in English Courts for any tort committed by him. This is merely a special application of the general principle that foreign Sovereigns are wholly exempt from the civil and criminal jurisdiction of English Courts. The only remedy for injuries done by them is by way of diplomatic and executive action on the part of the British Government.

It makes no difference that the wrongful act is committed in England. A foreign Sovereign does not by residing in British territory, waive the privilege or submit himself to the jurisdiction of the local Courts, nor does it make any difference that the wrongful act is done by the Sovereign, in his private capacity. The exemption extends to all acts of a Sovereign, and not merely to acts of State. (Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149.)

A foreign Sovereign, within the meaning of this rule of immunity, includes—

(*a*) The independent State possessed of corporate or quasi-corporate personality, *e.g.*, the U. S. A.

(*b*) The personal head of an independent State under royal or monarchical government.

(*c*) The personal head of a Republican State, *e. g.*, the President of the French Republic or of the United States of America.

The Ruling Princes of the Native Indian States, though under the suzerainty of His Majesty, are Sovereigns within the meaning of this rule. [Statham *v.* Statham (1912).]

"*The Law of Torts*," BY SIR FREDERICK POLLOCK.

There is another quite distinct point of jurisdiction in connection with which the term "Act of State" is used.

A Sovereign prince or other person representing an independent power is not liable to be sued in the Courts of this country for acts done in a Sovereign capacity; and even if in some other capacity he is a British subject, as was the case with the King of Hanover, who remained an English Peer after the personal union between the Crowns of England and Hanover was dissolved. [Duke of Brunswick *v.* King of Hanover (1843-44) 6 Beave, 57, 63 R. R. 1, 8; affirmed in the House of Lords, 24, L. C. I., 81 R. R. 1.).

If we may generalize from the doctrine of our own Courts the results seem to be that an act done by the authority previous or subsequent of the Government of a Sovereign State in the exercise of *de facto* Sovereignty is not examinable at all in the Courts of Justice of any other State. So far as it affects the persons not subject to the Government in question, it is not examinable in the ordinary Courts of that State itself.

"*India under Curzon and after*," BY LOVAT FRASER.

The Princes and the Native States.

The English conception of the political condition and standing of the Princes of India is often equally inaccurate. The

interests of the Sovereign Power and of the Princes and Chiefs grow more nearly identical as the years pass. Both are concerned to preserve the existing system, because both realise that failure to resist the enemies of order and good government might plunge them into common ruin. One the other hand, the generous loyalty of the Princes and Chiefs to the British Crown is a solid factor which helps materially to preserve stability at a time when such assurances are of the utmost value. The Viceroy and the Government of India have no more imperative duty than that of maintaining good relations with the Native States.

The exact status of the Princes and Chiefs, and the niceties of their relations with the Sovereign Power, are tinged with a vagueness about which experts still dispute, and regarding which I do not presume to offer an opinion. The very terminology used in this connection is a constant subject of argument, and it may be useful to mention that, in the view of some in whose judgment reliance can be placed, the words "ally," "suzerainty," "feudatory," and "federal relationship," are all inapplicable to the relations between the Native States and the Crown. It has even been argued that the word "sovereignty" should not be applied to the powers of a Ruling Chief, though Sir William Lee-Warner, whose authority in such matters is generally recognised, takes a contrary view.

At present some among them, in good faith, profess a conception of their own independence, with concomitant pretensions to regal honours, which are clearly unfounded. They are alike the language and the trappings of royalty.

Lord Curzon held very frank opinions upon the subjects I have been discussing, and took many opportunities of enunciating his views. Among these numerous discourses, a quotation may be taken from his speech at the investiture of the young Nawab of Bahawalpur, because it best illustrates Lord Curzon's conception of the position and the duties of Indian Princes and Chiefs. He said in November 12, 1903 :—

"When the British Crown, through the Viceroy, and the

Indian Princes in the person of one of their number are brought together on an occasion of so much importance as an installation ceremony, it is not unnatural that we should reflect for a moment on the nature of the ties that are responsible for this association. They are peculiar and significant; and, so far as I know, they have no parallel in any other country in the world. The political system of India is neither Feudalism nor Federation; it is embodied in no constitution, it does not always rest upon Treaty, and it bears no resemblance to a League. It represents a series of relationships that have grown up between the Crown and Indian Princes under widely differing conditions, but which in process of time have gradually conformed to a single type. The Sovereignty of the Crown is everywhere unchallenged. It has itself laid down the limitations of its own prerogative. Conversely the duties and the services of the States are implicitly recognised and as a rule faithfully discharged. It is this happy blend of authority with free will, of sentiment with self-interest, of duties with rights, that distinguishes the Indian Empire under the British Crown from any other dominion of which we read in history. The links that hold it together are not iron fetters that have been forged for the weak by the strong; neither are they artificial couplings that will snap asunder the moment that any unusual strain is placed upon them, but they are silken strands that have been woven into a strong cable by the mutual instincts of pride and duty, of self-sacrifice and esteem.

"It is scarcely possible to imagine circumstances more different than those of the Indian Chiefs now from what they were at the time when Queen Victoria came to the throne. Then they were suspicious of each other, mistrustful of the Paramount Power, distracted with personal intrigues and jealousies, indifferent or selfish in their administration, and unconscious of any wider duty or Imperial aim. Now their sympathies have expanded with their knowledge, and their sense of responsibility with the degree of confidence reposed in them. They recognise their obligations to their own States, and their duty

to Imperial throne. The British Crown is no longer an impersonal abstraction, but a concrete and inspiring force. They have become figures on a great stage instead of actors in petty parts.

"In my view, as this process has gone on, the Princes have gained in prestige instead of losing it. Their rank is not diminished, but their privileges have become more secure. They have to do more for the protectionthat they enjoy, but they also derive more from it; for they are no longer detached appendages of Empire, but its participators and instruments. *They have ceased to be the architectural adornments of the Imperial edifice and have become the pillars that help to sustain the main roof.*"

A month later, at Ulwar, Lord Curzon further enlarged upon the reciprocal relations of the British Crown and the Indian Princes, saying :—

"The Crown, through its representative, recognises its double duty of protection and self-restraint of protection, because it has assumed the task of defending the State and chief against all foes and of promoting their joint interests by every means in its power; of self-restraint, because the Paramount Power must be careful to abstain from any course calculated to promote its own interests at the expense of those of the State. For its part, the State thus protected and secured, accepts the corresponding obligation to act in all things with loyalty to the Sovereign Power, to abstain from all acts injurious to the Government, and to conduct its own affairs with integrity and credit.

"I sometimes think that there is no grander opportunity than that which opens out before a young IndianPrince is invested with powers of rule at the dawn of manhood. He is among his own people. He is very likely drawn, as is the Maharaja whom we are honouring to-day, from an ancient and illustrious race. Respect and reverence are his natural heritage, unless he is base enough or foolish enough to throw them away. He has as a rule ample means at his disposal, enough both to gratify any reasonable desire and to show charity and munificence to

others. Subject to the control of the Sovereign Power, he enjoys very substantial authority, and can be a ruler in reality as well as in name. These are his private advantages. Then look at his public position. He is secure against rebellion inside the State or invasion from without. He need maintain no costly army, for his territories are defended for him; he need fight no wars, except those in which he joins voluntarily in the cause of the Empire. His State benefits from the railways and public works, the postal system, the fiscal system and the currency system of the Supreme Government. He can appeal to its officers for guidance, to its practice for instruction, to its exchequer for financial assistance, to its head for encouragement and counsel. He is surrounded by every condition that should make life pleasant, and yet make it a duty."

To these extracts may be added a passage from an address delivered by the Viceroy to the Chiefs of Kathiawar in Darbar at Rajkot on November 6th, 1900, when he explained his views upon the duties devolving on Native States in these impressive words :—

"I am a firm believer in the policy which has guaranteed the integrity, has ensured the succession, and has built up the fortunes of the Native States. I regard the advantage accruing from the secure existence of those States as mutual. In the case of the Chiefs and the States it is obvious, since old families and traditions are thereby preserved, a link is maintained with the past that is greatly cherished by the people and an opening is given for the employment of native talent which the British system does not always or equally provide. But to us also the gain is indubitable, since the strain of Government is thereby lessened, full scope is provided for the exercise of energies that might otherwise be lost to Government, the perils of excessive uniformity and undue centralisation are avoided, and greater administrative flexibility ensues. So long as these views are held—and I doubt if any of my successors will ever repudiate them—the Native States should find in the conciousness of their security a stimulus to energy and to well doing. They should

fortify the sympathies of Government by deserving them. To weaken this support would be to commit a suicidal crime.

"If the Native States, however, are to be accepted this standard it is obvious that they must keep pace with the age. They cannot dawdle behind, and act as a drag upon an inevitable progress. They are links in the chain of Imperial administration. It would never do for the British links to be strong and the native links weak, or *vice versa*. As the chain goes on lengthening, and the strain put upon every part of it increases, so is uniformity of quality fibre essential. Othwerwise the unsound links will snap. I, therefore, think, and I lose no opportunity of impressing upon the Indian Chiefs, that a very clear and positive duty devolves upon them. It is not limited to the perpetuation of their dynasties or the maintenance of their Raj. They must not rest content with keeping things going in their time. Their duty is one, not passive acceptance of an established place in the Imperial system, but of active and vigorous co-operation in the discharge of its onerous responsibilities. When wrong things go on in British India, the right of public criticism beats fiercely upon the offending person or spot. Native States have no right to claim any immunity from the same process. It is no defence to say that the standards there are lower, and that as censors, we must be less exacting. That would be an admission of the inferiority of the part played by the States in the Imperial scheme, whereas the whole of my contention rests upon its equality, and whole of my desire is to make it endure."

"*India To-day*," BY OLIVER BAINBRIDGE.

Native States.

With an area of 765,000 square miles and a population of 64,000,000, the Native States are an important feature in the political calculations of the Indian Empire.

The relations that exist between the British Government and the Native States are almost ideal, for they are protected from all enemies and given every freedom and privilege.

The British Government divides the States into two main heads; (1) those holding direct relations with the Governor-General in Council; and (2) States holding relations primarily with the several local governments of India.

An interesting point in relation to the most important States is that they are very little older than the British dominion and that the Rulers and principal officials are as foreign as the British.

When the mutiny broke out in 1857 the Native Princes proved themselves to be staunch supporters of the Government and helped to quench the bloody flame that must have swept the whole Empire but for their powerful aid, in which they displayed the most noble sentiments. Sir Richard Temple says that "they rendered a priceless service to the British cause at the moment of its extreme depression. They deserved then, as they will never deserve, to be esteemed as bulwarks of imperial stability and as conservative elements in a country where subversive and explosive forces may at times burst forth."

The explanation of their re-union will be found in the knowledge of the purity of the Government's intentions and that the future of India lies in Great Britain. They are brilliant and perplexing personalities and bring to their thrones just the education and gifts which they demand.

"*India, its Administration and Progress,*" BY SIR JOHN STRACHEY.

The supreme authority of the British Government has become a fact which no Native State in India think for a moment of disputing. These States are often called "Feudatory," but there is no analogy between their relations with the British Government and the incidents of ancient feudal tenure. The expression has come into use as Sir Charles Aitchison says "merely from want of a better or more convenient term to denote the subordination of territorial sovereignties to a common superior combined with the obligation to discharge certain duties and render certain services to that superior."

In the case of the more important States our supremacy was

long ago recognised more or less completely by treaty; in the case of the smaller States whether expresses and formerly recorded or not it has become one of the obvious conditions of their existence. Some of the States so far as their internal administration is concerned are substantially independent unless their government becomes so scandalously bad and oppressive that intervention is forced upon us; in other States the authority of the Chiefs is more strictly limited; in many of the smaller States it hardly exists in any independent form. But whether the State be great or small there are certain rights which the paramount power always asserts. No Native State can have any political communication with any other Native State or with any Foreign Power without the consent of the British Government, no Native State can maintain more troops or military establishments than are required for purposes of internal administration, for the support of the reasonable dignity of the Chief or except in accordance with its recognised obligations towards the British Government, there is no Native State in which civil war would be permitted, or in case of gross and systematic injustice and tyranny the British Government would interfere for the protection of the people. This last right is the necessary consequence of our absolute power and it has been repeatedly exercised. There is no Native Chief who might not be tried and punished for a crime of special atrocity by a tribunal constituted by the British Government.

"*Indian Polity.*" BY GENERAL SIR GEORGE CHESNEY.

Native States.

It remains to mention the different Native States which still comprise a large proportion of the whole peninsula of India. All these are subject to the control of the paramount power which is exercised in a greater or less degree according to the nature of the treaty subsisting with each other. Generally speaking they have unrestricted civil and criminal jurisdiction, raise their own revenues, some of them levy customs on the

frontier of their territories and all of them maintain a military force more or less disciplined and equipped and in some cases of considerable strength. But they have no political relations with other States and in this larger of them garrisons are furnished from the Indian army. Their position is therefore somewhat analogous to that of the mediatised principalities of Germany.

India and the Darbar.

(A Reprint of the Indian Articles in the Empire Day Edition of the *Times*, May 24th, 1911.)

The tie which unites.

The individual personality of the Indian Princes is a tempting topic, but only a few typical instances can be cited. The nature of the tie which unites them to the Empire has often been discussed. Sir William Lee-Warner in his authoritative work upon the subject has argued that the tie is not international because the States cannot form alliances or declare war; it is not, he holds, feudal and he dissents from the use of the word "feudatory" as dangerous to the rights of the protected Princes and it is not, he contends, constitutional as Professor Westlake and Sir Lewis Tupper have held. He defined the Indian States as semi-Sovereignties or types of limited sovereignty. The question is of technical interest, but if any endeavour is made to associate the Princes of India more closely with the control of the Indian Empire it may have much practical importance. It cannot be discussed within contracted limits. All that can be noted here is that probably very few Indian Princes—though one of them possess acute intellects—ever trouble themselves about the nice definition of International Law. Their view is summed up in their attitude of personal devotion to the Crown. They frequently maintain close friendship with a Viceroy, and sometimes their relations with the head of the Government are ever marked by affection, they generally desire to be on good terms with the Government of India whose authority they respect but hardly love. Does any one ever love a Government?

"*The Indian Constitution.*" BY A. RANGASWAMI IYENGAR.

Semi-Sovereignty and Self-Government.

It would thus be seen that Sir William Lee-Warner desires to put the Native States of India in a position *higher than that of the self-governing colonies of the British Empire.* Legally speaking, the powers of self-government which the latter possess rest *merely upon a constitutional convention* or upon the implied understanding that the British Parliament, whose legal Sovereignty is unquestioned, as well as its executive, ought not to interfere with the affairs of the provinces or colonies to which self-governing organs have been granted for conducting their own affairs; whereas, as Sir William Lee-Warners point out, *the powers of internal self-government possessed by the bulk of the Native States are based upon the solemn assurances, express treaties and agreements as well as past traditions and uniform policy.* He would therefore describe the Native State as *semi-sovereignties rather than as self-governing units.* It would, however, be an error to go away with the impression that because the legal and political status of the Native States as regards *autonomy is higher* than that of the self-governing colonies, their standard of administration is necessarily higher than those of the latter or that those free institutions and constitutional principles which have gained for the colonies their right of self-government are necessarily operative in the constitutions and administrative machinery of the Native States.

After all the institutions of the Native States are dependent for the personality of the ruler on whom rests the responsibility of the good administration of each State, whatever machinery, democratic or bureaucratic, may have been established under him. It is to him that the Government of India look for the proper and efficient government of the peoples under him. From the point of view of the Indian constitution therefore the administration of a Native State, is the administration of a Native ruler or a Prince and not that of a system or scheme of administrative machinery or of political institutions, popular or

otherwise, which is dependent for its success upon the laws and regulations by which they are constituted and upon the degree of supervision which is exercised by the authorities legally constituted to discharge that task.

"*The Penal Law of India,*" BY DR. H. S. GOUR, D.C.L., LL.D.,

Section 2.

Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Meaning of Words.—"Every person" means all persons irrespective of nationality, allegiance, rank of status, caste, colour or creed. "Shall be liable to punishment" means that they run the risk of being punished and not that they shall be punished which depends upon the powers of the Courts constituted to try offenders. The "Person" here spoken of is a natural as distinguished from a juridical person such as a corporation. "And not otherwise" means that no person can be punished for any act which amounts to an offence under the Code otherwise than according to the provisions thereof except when the same act is made punishable by some local or special law (*a*). Of course the clause could not mean that if a given set of facts constitute an offence both under the Code as well as some local or special law the offender can only be punished under the Code and not under any other law. The clause is rather intended to direct attention to the forms of punishments prescribed in the Code and which have superseded other forms which were in vogue prior to its enactment. "Act or omission" a mere act or omission however immoral is not punishable unless it is contrary to the provisions of the Code (*b*). "Within the said territories" refers to the territories defined in the preceding section.

Persons subject to the Code.—It has been already remarked

(*a*) Commr.'s 2nd Rep., ss. 537, 538. (*b*) See s. 33 *infra*.

before that all persons are equally subject to the Code. But while it is so, it must be remembered that the authority of the Code may not reach all persons. As the Code is an Act of the Governor-General in Council its authority is necessarily limited by his legislative authority. And as the Governor-General in Council cannot legislate so as to "affect the prerogative of the Crown or the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom, it follows that the Act does not and cannot affect the established prerogative of the Crown or the common law of England." Now as according to this common law the King can do no wrong (*a*), and as by the constitution of England his authority is paramount, it follows that the King cannot be proceeded against, under the Code, both because it does not apply to him, as also because there is no Court competent to try him. As Blackstone says, "no suit or action can be brought against the Sovereign even in civil matters, because no Court can have jurisdiction over him. For all jurisdiction implies superiority of power; authority to try would be vain and idle without an authority to redress; and the sentence of a Court would be contemptible unless that Court had power to command the execution of it; but who, says Finch, shall command the King? Hence it is likewise that by the law the person of the Sovereign is sacred even though the measures pursued in his reign be completely tyrannical and arbitrary, for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment. If any foreign jurisdiction had this power, as was formerly claimed by the Pope, the independence of the Kingdom would be no more; and if such power were vested in any domestic tribunal there would soon be an end of the constitution by destroying the free agency of one of the constituent parts of the legislative power (*b*)."

Besides the King, foreign ambassador, their families,

(*a*) 1 Black, p. 246.

(*b*) 1 Black, p. 242; followed per Brett, L.J., in The Parlement Belge, L. R. 5 P. D. 197 (198).

secretaries, messengers, and servants are also not subject to any municipal law. As Blackstone observes: "The rights, the powers, the duties and the privileges of ambassadors are determined by the law of nature and nations and not by any municipal constitutions. For as they represent the persons of their respective masters who are not subject to any laws but those of their own country, their actions are not subject to the control of the private law of that State wherein they are appointed to reside. He that is subject to the coercion of laws is necessarily dependent on that power by whom those laws were made but an ambassador ought to be independent of every power except that by which he is sent and of consequence ought not to be subject to the mere municipal laws of that nation wherein he is to exercise his functions. If he grossly offends or makes an ill-use of his character he may be sent home and accused before his master, who is bound either to do justice upon him or avow himself the accomplice of his crimes (*c*)."

Of course in order to be exempt an ambassador must have been sent by a Foreign Government. If he is not, the mere fact that he was recognised by His Majesty's Government is sufficient to clothe him with immunity (*d*). It is also said that the immunity of ambassadors extends only to such crimes as are *Mala prohibita* and not to those that are *Mala in se* as murder (*e*). For a direct attempt against the life of the Sovereign an ambassador or one of his suite would directly be punishable by the State (*f*).

As foreign ambassadors are exempt from the Code so are also the foreign Sovereigns and for the same reason. As Marshall, C.J., observed: "The world being composed of distinct

(*c*) 1 Black, 253, 254. The Diplomatic Privilege Act, 1708 (7 Anne, C. 12). As to when he may be arrested, see Hall's International Law, pp. 168-169 (3rd Ed.); [Magdelana Steam Navigation Co. *v.* Matine] (1859) 2 E. & E. 94; Musurus Bey *v.* Gadbon (1894) 2 Q. B. 352.

(*d*) Per Brett, L.J., in the Parlement Belge, L. R. 5 P. D. 197 (206).

(*e*) Kerr on Blackstone, Vol. I p. 224 (Ed. 4th). See also Phillmore's International Law, Vol. II., p. 202 (3rd Ed.).

(*f*) 2 Black, 254, 1 Hale P. C., ss. 96-99; 2 Phil. International Law, p. 202 (3rd Ed.).

sovereignties possessing equal rights and equal independence whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates, and its wants require all Sovereigns have consented to a relaxation in practice in cases under certain peculiar circumstances of that absolute and complete jurisdiction within their respective territories which Sovereignty confers. One Sovereign being in no respect amenable to another and being bound by the obligations of the highest character not to degrade the dignity of his nation by placing himself or its Sovereign rights within the jurisdiction of another can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent Sovereign station, though not expressly stipulated, are reserved by implication and will be extended to him (*g*)." It has therefore been held to be in accordance with the laws of nations that a Sovereign prince resident in the dominions of another is exempt from the jurisdiction of the Courts there (*h*). Indeed, the exercise of such jurisdiction would be incompatible with his regal dignity, that is to say, with his absolute independence of every superior authority (*i*).

Indian Princes.

Indian feudatory Princes and Princes in political alliance with Government are not British subjects, nor are their territories British territory. (M. Hd. Yusufuddin, C. 20, P. C.) They are, therefore, exempt from the operation of the Penal Code. (Section 1 *ante*.) And as being heads of their own States they cannot be tried by the tribunals of their creation, it follows that in their case there is no judicial trial at all. Offences committed by them

(*g*) The Exchange *v.* M'Faddon, 7 Cranch 116 (136); The Parlement Belge, L. R. 5 P. D. 187 (205); Mighell *v.* The Sultan of Johor (1894) 1 Q. B. 149.

(*h*) Per Lord Langdale in The Duke of Brunswick *v.* The King of Hanover 6 Beav. 1 (50).

(*i*) The Parlement Belge, L. R. 5 P. D. 197 (207); Secretary of State *v.* Moment, 17 C. W. N. 169.

do not, however, as a rule go unpunished, though the procedure adopted for their trial is not that provided by the Code of Criminal Procedure (Act V of 1898), nor is the evidence adduced shifted in the light of the Indian Evidence Act. (Act I of 1872.) The action of the Government in bringing them to justice is an act of State (*In re* Maharaja Madhav Sing) against which there is no appeal to judicial tribunals, and the sentence passed on them need not conform to the description of punishments provided in the Code. (Per Lord Davey.) The usual practice adopted by Government in cases of suspected crime is to appoint a commission of enquiry which takes such evidence as is forthcoming, draws up its report, and submits it to Government for "the information of its mind. The Government then passes a final order and in doing so it may not adopt the recommendation or findings of the report. If the person affected by the order is aggrieved, his only remedy is by a memorial to the higher political authority and before whom he is entitled to no audience by counsel. He has no remedy in the Civil Court against his conviction, if unjust, for being an act of State. The Municipal Courts have no jurisdiction to enquire into or judge of its propriety or correctness.

"*The Imperial Gazetteer*," Vol. IV.

Attributes of Sovereignty divisible.

The generally accepted view is that Sovereignty is divisible, and that its attributes, such as the right to make war or peace, the right of foreign negotiations, the right to legislate, the right to administer civil or criminal justice and so forth, are capable of division. The Sovereign who enjoys all these rights is alone independent and in India, the accepted suzerainty of British Crown involves a partition of the aggregate of such powers between the Suzerain and the Prince.

"*Law of Crimes*," BY RATANLAL AND DHIRAJLAL.

Foreign Sovereigns.

The world being composed of distinct Sovereignties, possessing

equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of these good offices which humanity dictates and its wants require, all Sovereigns have consented to a relaxation in practice in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which Sovereignty confers. One Sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its Sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license or in the confidence that the immunities belonging to his independent Sovereign station, though not expressly stipulated, or reserved by implication, and will be extended to him. (The Exchange *v.* M'Faddon (1812) 7 Cranch 116, 136.) The real principle on which the exemption of every Sovereign from the jurisdiction of every Court has been deduced is that the exercise of such jurisdiction would be incompatible with his real dignity, that is to say, with his absolute independence of every superior authority. [The Parlement Belge (1880) 5 P. D. 197; 297.) Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149.]

Memo. by a well-known authority on political questions from Baroda.

As a matter of principle, the Rulers of Indian States are ordinarily exempted from the jurisdiction of Courts established by the Legislature in British India. In the eye of the Indian Law their position is analogous to that held by Sovereigns under the English Law in England, the Courts have no jurisdiction over a Foreign Sovereign unless he himself submits to the jurisdiction. It used to be argued that the Indian Princes could not be styled "Sovereigns" in the proper sense of the word as their relations with the British Government are not governed by International Law. But this theory has now been exploded, and in Indian Political Law Sovereignty has long

been recognised as divisible and such attributes of Sovereignty as the Princes possess have been held sufficient to give to them the same privilege in British Indian Law as that enjoyed by Foreign Sovereigns under the International Law. In order, however, to meet the exigencies of an extensive and expensive connection of the Princes with British India this principle of English Law has been slightly modified in its application in India so far as civil litigation is concerned, while in England the privilege is unconditional and dependent only on the will of the Foreign Sovereign. In India it has been ruled that with the consent of the Governor-General in Council the Ruling Prince may be sued under certain conditions reasonably indicating that the Prince has made himself by his own acts liable to the civil jurisdiction of the British Indian Courts.

This modification, however, leaves the privilege of the Princes as regards exemption from the Criminal Courts unimpaired. Sir W. Lee-Warner at page 335 of his book on "Native States of India" clearly states that the Princes are not subject to the regular jurisdiction of the Court. The digest of Statutory provisions given by Sir Courtney Ilbert in Chapters II and V of his book entitled "The Government of India" leads to the same conclusion. It is stated in these chapters that the Governor-General in Council may extend British jurisdiction in the certain cases to the Indian States and may provide for its exercise over subjects of Indian States. It is nowhere stated that the Rulers of Indian States can never be subjected to ordinary British jurisdiction under any circumstances a privilege which is inherent in the Indian Princes cannot be modified or extinguished except by express provision.

There have been cases wherein the Government of India has brought extraordinary machinery into play in order to apply correctives to acts done by Indian Princes in their own territory. But these were exceptional remedies undertaken in order to fulfil the moral obligations of the British Crown towards the Indian people as a whole. The action taken in all these cases had been necessitated owing to the serious nature of the acts

of which the rulers were alleged to be guilty. The very exceptional nature of the action taken and the extraordinary mode of applying the remedy are in themselves sufficient to prove the ordinary rule that the Indian Princes as a class are not amenable to the jurisdiction of British Courts.

"*Status of the Kolhapur State.*"

Extract from Treaties, Engagements and Sanads by C. U. Aitchison, Edition of 1892, Vol. VII., p. 181 :—

"From the records of the Bombay Government, No. 8 of New series, etc :—

Kolhapur :—The Rajas of Kolhapur are the representatives of the younger branch of the family of Shivaji, as the Rajas of Satara were of the elder. After the death of Rajaram, Shivaji's younger son, who was the head of the Maratha Power during the captivity of his nephew Shahuji, his widow Tarabai, placed her son Shivaji in power. He died in 1712 and was succeeded by Sambhaji, son of Rajaram's younger widow. The Kolhapur family, supported by Ramchander Pant Amatya, Sarjerao Ghatge of Kagal (Santajirao Ghorpade) and other powerful Chiefs long struggled to retain the supremacy among the Marathas, but were compelled to yield precedence to Shahuji, who by Treaty in 1731 recognised Kolhapur as a distinct and independent principality."

This will show that Kolhapur represents an ancient independent kingdom and is neither a gift nor a creation by the British Government.

Page 201 *ib.* Treaty of 1826.

"*Preamble* :—Whereas a treaty of peace and *friendship* was concluded between the British Government and the Raja of Kolhapur on the 1st of October 1812 and to the confirmation of the alliance, the following articles have been agreed on between the two Governments" :—

"Article 2.—But this article is no wise to diminish the *independence* of the said Raja as a *Sovereign Prince.*"

This clearly shows that the Maharajas of Kolhapur are independent Sovereigns in alliance with the British Government. They enjoy a hereditary salute of 19 guns, the present Maharaja being conferred a salute of 21 guns as personal distinction. Kolhapur is the premier State of the Bombay Presidency. The Maharaja has full Sovereign powers including those of legislation and life and death.

"*Indian Constitutional Documents*," BY MUKHERJI, Vol. I.

Queen Victoria's Proclamation, 1858.

"We desire no extension of our present territorial possessions, and while We will permit, no aggression upon Our Dominions or Our Rights to be attempted with impunities. We shall sanction no encroachment on those of others. We shall respect the Rights, Dignity and Honour of Native Princes as Our own; and We desire that they, as well as Our own subjects, should enjoy that prosperity and the social advancement which can only be secured by internal peace and good government."

PART II.

JUDICIAL NOTICE.

"*The Laws of England*," BY THE EARL OF HALSBURY, Vol. XIII.

EVIDENCE.

MODES IN PROOF.

Affairs of State? States of War and Peace, Foreign Rulers, Officers of State.

The Courts take judicial cognisance of the Government of the country and the great officers of State by whom it is carried on (*a*), of the order and course of proceedings in Parliament (*b*), and of the commencements, prorogations and sessions of Parliaments (*c*).

They also take notice of the existence and titles of foreign States recognised by the British Government as independent (*d*) and of the territorial limits of their dominions (*e*).

The status of a foreign ruler will be noticed by the Court in accordance with the recognition afforded to him by the British Government (*f*). The order to inform itself upon which points the Court, if necessary, communicate with the proper Government authority in this country.

(*a*) In [Whaley *v.* Carlisle] (1866) 17 I. C. L. R. 792, the Court took notice that Lord Hawkesbury was foreign minister in 1803; and see [R. *v.* Jones (1809) 2 Camp. 131].

(*b*) Lake *v.* King (1668) 1 Wms. Saund. 131 b.

(*c*) R. *v.* Wilde (1670) 1 Lev. 296; Birt *v.* Rothwell (1697) 1 Ld. Raym. 210, 343.

(*d*) Taylor *v.* Barclay (1828), 2 Sim. 213; United States of America *v.* Wagner (1867) 2 Ch. App. 582. The existence and status of foreign States not so recognised are not noticed by the judges [Barne (City) *v.* Bank of England (1804) 9 Ves. 347] but must be proved by evidence [Yrisarri *v.* Clement (1826) 3 Bing. 432].

(*e*) Mighell *v.* Johore (Sultan) (1894) 1 Q. B. 149 C. A.

(*f*) Foster *v.* Globe Venture Syndicate, Ltd. (1900) 1 Ch. 811.

Judicial notice will be taken of the fact that this country is at war with any other when such is the case and of the existence of a state of war between other countries when that fact is officially recognised by the Government of this country.

"*The Law of Evidence*" BY WOODROFFE & AMEERALI.

Section 57.

The Court shall take Judicial Notice of the existence and title and national flag of every State or Sovereign recognised by British Government.

Clauses (8-12) are in general accordance with the English Law under the eighth section, the existence, title and national flag of every State or Sovereign, recognised by the British Crown will be recognised.

Kay, L.J. "The status of a foreign Sovereign is a matter, of which the Courts of this country take judicial cognizance, that is to say, a matter which the Court is either assumed to know or to have the means of discovering without a contentious enquiry, as to whether the person cited is or is not, in the position of an independent Sovereign. Of course, the Court will take the best means of informing itself on the subject, if there is any kind of doubt, and the matter is not as notorious as the status of some great monarch such as the Emperor of Germany." Mighell *v.* Sultan of Johore, I. Q. B. (1894) 149, 161, per Kay, L. J. In this case the person cited was the Sultan of Johore and the means which the judge took of informing himself as to his status (and which was held to be a proper means) was by enquiry at the Colonial Office.

The Maharaja of Kashmir *v.* Mohun Lal (1886) P. R.

Luchmi Narain *v.* Raja Partab, 2 A. 17 (1878).

Re : Statham *v.* Statham and Gaikwad of Baroda.

Willis, J.

I entertain no doubt in this case. In the first place it is clear that the proper mode of obtaining information with respect to the status of the defendant is to communicate and to obtain a letter from the Secretary of State.

Civil Procedure Code (1908), section 84.

Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor-General in Council.

Taylor on Evidence.

All civilized nations as members of the Great Family of Sovereignties give political acknowledgment of each other's existence and general public and external relations. After such acknowledgment by their own countries the existence and title of a State are recognised by the public tribunal and functionaries of every nation in the civilized world. The judges of each nation are bound, ex-officio to know whether or not their Government has recognised a nation as an Independent State ; so also they are bound to take a judicial cognizance not only of the status, but also of the boundaries of Foreign State and the status of a Foreign Sovereign. (Mighell *v.* Sultan of Johore.)

Best on Evidence.

An enumeration of the matters which the Courts, in obedience to common or Statute law, notice, ex-officio, would here be out of place. Suffice it to say generally that besides noticing the ordinary course of nature, seasons, &c., the Courts notice without proof, various political, judicial and social matters. Thus they notice the political constitution of our own Government, the territorial extent of the jurisdiction and Sovereignty exercised *de facto* by it, *the existence* and *title of other Sovereign Powers*, the jurisdiction of the superior Courts, &c.

"*Law Reports*," *Chancery Division*, 1900.

Foster v. *Globe Venture Syndicate, Limited.* (1899 F. 376.).

Practice—Evidence—Status and Boundaries of Foreign State—Judicial Cognizance—Application to Foreign Office.

The Court takes judicial cognizance not only of the status, but also of the boundaries of Foreign States, and if in doubt

will apply for information to the Secretary of State for Foreign Affairs, whose reply is conclusive.

Hughes Q.C., and K. Metcalfe, for the plaintiff. The Court is bound to know judicially whether a Foreign State is or is not recognised as independent by the Crown, and if in doubt will apply to the Secretary of State for Foreign Affairs for information; Daniell's Chancery Practice, 6th ed. p. 72; Taylor *v.* Barclay; The Charkich; Mighell *v.* Sultan of Johore. The Principle of Taylor *v.* Barclay also covers the second question, namely, whether Suss is within the dominions of the Sultan of Morocco.

Farwell, J. In this action two of the issues raised are whether the tribes of Suss are independent or are the subjects of the Sultan of Morocco; and whether a tract of land between the Atlas Mountains and the river Nun is the territory of those tribes or is the territory of the Sultan of Morocco. As regard the first question whether the tribes are independent or not that is to say, whether they are an independent State—I am bound by the authorities which have been cited to take judicial cognizance whether they are or are not independent, and if any personal knowledge is insufficient to instruct me on that point then I have the authority of those cases for saying that the proper course is to apply to the Secretary of State for Foreign Affairs for information and his answer (which is in effect the answer which the Crown condescends to give to judges of the High Court when they ask such a question) is conclusive on the parties.

Part III.

ENGLISH CASE—LAW.

"*Evan's leading cases on International Law.*"

Section 7. Exemption from Jurisdiction.

The Scooner Exchange v. *M'Faoon and others.*

(*Supreme Court of the United States*, 1812, 7 *Cranch* 116.)

Appeal from the Circuit Court of the United States for the district of Pennsylvania.

Marshall, C.J., delivered the opinion of the Court as follows :—

This case involves the very delicate and important inquiry, whether an American citizen can assert, in an American Court, a title to an armed national vessel, found within the waters of the United States.

The question has been considered with an earnest solicitude, that the decision may conform to those principles of national and Municipal law by which it ought to be regulated.

In exploring an unbeaten path, with few, if any aids. from precedents or written law, the Court has found it necessary to rely much on general principles, and on a train of reasoning, founded on cases in some degree analogous to this.

The jurisdiction of Courts is a branch of that which is possessed by the nation as an independent Sovereign power.

The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its own Sovereignty to the extent of the restriction, and an investment of that Sovereignty to the same extent in that power which could impose such restrictions.

All exceptions, therefore, to the full and complete, of a nation

within its own territories, must be traced upto the consent of the nation itself. They can flow from no other legitimate source.

This consent may be either expressed or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory.

The world being composed of distinct Sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all Sovereigns have consented to a relaxation in practice, in cases under peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which Sovereignty confers.

This consent may in some instances be tested by common usage, and by common opinion, growing out of that usage.

A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, which should suddenly and without previous notice, exercise its territorial powers in a manner not consonant to the usages and receive obligations of the civilised world.

This full and absolute territorial jurisdiction being alike the attribute of every sovereign, and being incapable of conferring extra territorial power, would not seem to contemplate foreign Sovereigns nor their Sovereign rights as its objects. One Sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its Sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an expressed license, or in the confidence that the immunities belonging to his independent Sovereign station, will be extended to him.

This perfect equality and absolute independence of Sovereigns, and this common interest impelling them to mutual intercourse and an interchange of good offices with each other, have given rise to a class of cases in which every Sovereign is understood to waive the exercise of a part of that complete exclusive

territorial jurisdiction, which has been stated to be the attribute of every nation. 1st. One of these is admitted to be the exemption of the person of the Sovereign from arrest or detention within a foreign territory.

If he enters that territory with the knowledge and licence of its Sovereign, that license, although containing no stipulation exempting his person from arrest, is universally understood to imply such stipulation.

Why has the whole civilised world concurred in this construction? The answer cannot be mistaken. A Foreign Sovereign is not understood as intending to subject himself to a jurisdiction incompatible with his dignity, and the dignity of his nation, and it is to avoid this subjection that the license has been obtained. The character to whom it is given, and the object for which it is granted, equally require that it should be construed to impart full security to the person who has obtained it. This security, however, need not be expressed; it is implied from the circumstances of the case.

Should one Sovereign enter the territory of another, without the consent of that other, expressed or implied, it would present a question which does not appear to be perfectly settled, a decision of which is not necessary to any conclusion to which the Court may come in the cause under consideration. If he did not thereby expose himself to the territorial jurisdiction of the Sovereign, whose Dominions he had entered, it would seem to be the cause all Sovereigns implied engaged not to avail themselves of a power over their equal, which a romantic confidence in their magnanimity has placed in their hands.

' *Beavan's Reports Rolls*," Vol. VI, 1845.

Charles Duke of Brunswick v. *The King of Hanover.*

Discussion of the question whether a Sovereign Prince is liable to jurisdiction of the Courts of a foreign country in which he happens to be resident, and as to the liability to suit of one who unites in himself the characters both of an independent Foreign Sovereign and a subject.

A Sovereign Prince resident in the dominions of another is ordinarily exempt from the jurisdiction of the Courts there.

A Foreign Sovereign may sue in this country both at law and in equity; and if he sues in equity he submits himself to the jurisdiction and a cross bill may be filed against him which he must answer on oath, but a Foreign Sovereign does not by filing a bill in Chancery against *A.*, make himself liable to be sued in that Court for an independent matter by *B.*

The King of Hanover after his succession renewed his oath of allegiance to the Queen of England and claimed the rights of an English Peer. Held that he was exempt from the jurisdiction of the English Courts for acts done by him as a Sovereign Prince, but was liable to be sued in those Courts in respect of matters done by him as a subject. Held also that the Sovereign character prevailed where the acts were done abroad and also where it was doubtful in which of the two characters they had been done.

A Foreign Sovereign Prince who was also an English Peer was made a defendant to a suit and served with a letter missive. The Lord Chancellor refused to recall it. The defendant then appeared and filed a demurrer for want of jurisdiction. Held first, that the Lord Chancellor had not decided that the defendant was liable to the jurisdiction of the Court and secondly that the defendant had not by appearing waived any defence to the bill.

A bill, filed by Charles, ex-Duke of Brunswick, against the King of Hanover (a subject of this realm) stated that by a decree of the Germanic Diet followed by declaration of his Agnati he had been deposed and his brother appointed successor and that by an instrument signed by the reigning Duke and by William the Fourth and his brother the Duke of Cambridge had been appointed guardian of the plaintiff's fortune and the guardianship "was to be legally established in Brunswick where it was to have its locality." That on the death of William the Fourth, the King of Hanover was appointed guardian and possessed himself of the private property of the plaintiff. The bill alleged that the instrument was void and prayed a declaration

to the effect and for an account. Held that the alleged acts under the instrument were not such as rendered the defendant liable to be sued or subject to the jurisdiction of this Court.

Semble also, that the instrument complained of was under the circumstances stated in the bill, connected with Political and State transactions and was a State document.

In a suit against a Sovereign Prince who is also a subject the bill ought, upon the face of it, to shew a case rendering the Sovereign Prince liable to be sued as a subject.

A simple allegation that a foreign instrument on Foreign Law is null and void, is too vague.

The defendant, who is a recognised independent Sovereign, is not amenable to the jurisdiction of this Court. The Law of Nations founded on principles of public policy grants to an individual of this rank, while in a foreign country an immunity from process. Vattel who treats of his subject, says :

" We cannot introduce in any more proper place an important question of the Law of Nations which is nearly allied to the right of embassies. It is asked what are the rights of a Sovereign who happens to be in a foreign country, and how the master of the country is to treat him? If that Prince become to negotiate or to treat about some public affair he is doubtless entitled in a more eminent degree to enjoy all the rights of ambassadors. If he become as a traveller his dignity alone and the regard due to the nation which he represents and governs shelters him from all insult, gives him a claim to respect and attention of every kind and exempts him from all jurisdiction. On his making himself known, he cannot be treated as subject to the common laws, for it is not to be presumed that he has consented to such a subjection and if a Prince will not suffer him in his dominions on that footing, he should give him notice of his intentions. But if the Foreign Prince forms any plot against the safety and welfare of the State—in a word if he acts as an enemy he may very justly be treated as such. In every other case he is entitled to full security, since even a private individual of a Foreign Nation has a right to accept it."

"A ridiculous notion has possessed the minds even of persons who deem themselves of superior understanding to the common herd of mankind. They think that a Sovereign who enters a foreign country without permission may be arrested there; but on what reason can such an act of coolence be grounded? The absurdity of the doctrine carries its own refutation on the face of it."

Though a Foreign Sovereign may sue as plaintiff in the Courts of this country, the general proposition that he may be sued has never been laid down. The dictum in Calvin's case, the case in Selden, and the case of Hullet *v.* The King of Spain, which will be cited by the plaintiff do not warrant the proposition. In Calvin's case it is said that a foreign King shall sue and be sued by the name of a King, but no instance is there cited of a Sovereign being sued except that of Baliol King of Scotland, who was feudatory to the King of England and as such was liable to the jurisdiction of his acknowledged superior lord. Calvin's case shews that a King carries with him to a foreign country all his privileges.

The case in Selden is not an authority for this proceeding. It was referred to by Lord Thurlow in the Nabob of the Carnatic *v.* The East Indian Company as appears by the note to that case, where it is stated "The Lord Chancellor also observed that the King of Spain had been once outlawed by Selden's advice to prevent him from taking advantage of his suit; that the outlawry was bad enough; but good, until reserved; therefore it was necessary for him to come in to reverse it in order to take advantage of his suit. His Lordship said he could not quote a better book for this than Selden's Table Talk."

The privilege of the Foreign Sovereign is at least equal to that of his ambassador, the Pro-rege (*a*). What are then the privileges of the ambassador, the representative of the King? Now the Act of Anne (*b*) is merely declaratory of the common law and of the Law of Nations. Viveash *v.* Becker (*c*); Lock-

(*a*) 4 Inst. 153. (*b*) 7 Ann. C. 12. (*c*) 3 M. & Sel. 292-298.

wood *v.* Coysgarne (*d*). That statute after reciting the insult committed on the Russian Ambassador by publicly arresting him (*e*), "in contempt of the protection granted by Her Majesty, contrary to the Law of Nations and in prejudice of the rights and privileges which ambassadors and other public ministers authorised and received as such, have at all times been thereby possessed of and ought to be kept sacred and inviolable," declares that all writs " whereby the person of any ambassador or other public minister of any Foreign Prince or State authorised and received as such by Her Majesty, her heirs or successors or the domestic servant of any such ambassador or other public minister may be arrested or imprisoned or his or their goods or chattles may be distrained, seized or attached shall be deemed and adjudged to be utterly null and void."

If " by the common law and the Law of Nations " as declared by that statute the means of the ambassador's retinue be privileged how can it be maintained that the Sovereign himself whom the ambassador represents is by that law, entitled to less respect?

Considerations of public policy must not be disregarded in this question; what then would be the consequence of holding a contrary doctrine? If an independent Foreign Sovereign be subject to the jurisdiction of this Court he must be liable to the consequences of a disobedience to its process decrees and orders; he must necessarily be liable to be attached and subject to personal restraint and incarceration. His imprisonment would cause the suspension of the functions of his government and such an act of outrage and aggression committed against a Sovereign personally and through him against his subjects would inevitably be regarded by them as a *casus belli*.

The defendant happens to be a Peer of Parliament and as such is privileged from arrest; but suppose the King of the Belgians or the King of Prussia came to this country on the

(*d*) 3 Bur. 1676. (*e*) See 1 Blackstone's Comm.

invitation of the Queen on business of the utmost importance to the interests and peace of the two nations or if the King of the French with that reciprocity and courtesy so desirable and advantageous to both countries were to return the Sovereign's late visit are they and all their retinue to be subject to be thrown in prison on bailable process issuing out of the Queen's Courts, to answer a demand to which they might not be liable in their own country, and which might ultimately turn out to be without foundation, would the French nation submit to such an insult? The friendly intercourse between Sovereigns would be wholly prevented if, by going to a foreign country they are to render themselves liable to the most inferior Courts there; the consequences to this country by countenancing such suits might be most disastrous and the public welfare requires that those consequences should be avoided.

The mere accident of a Foreign Sovereign being an English Peer does not affect the question; his higher recognised dignity must prevail, the regal character cannot be annihilated so as to enable the plaintiff to sue a party otherwise privileged. If it were necessary the Court would make a distinction between the acts of the defendant done as King of Hanover and those done in his quality of an English Peer. This was done in the case of the Nabob of Arcot *v.* The East India Company (*f*) where the Defendants filled the double character of Sovereigns and a Trading Corporation. There the bill was dismissed on the ground that the whole subject matter of the suit was a political and not a mercantile transaction. Here the whole transactions took place abroad and are of such a nature that they ought to be imputed to the defendant's regal character.

Again if the defendant were liable to the jurisdiction still he comes to this country by the consent of the Sovereign and

(*f*) 4 B. C. C. 180, 198, and see [Moodalay *v.* Morton] 1 B. C. C. 470, in which Lord Kenyon says "I admit that no suit will lie in this Court against a Sovereign power for any thing done in that capacity; but I do not think the East India Company is within that rule. They have rights as a Sovereign power they have also duties of individuals; if they enter into bonds in India the sum secured may be recovered here. So in this case as a private company they have entered into a private contract, to which they must be liable."

impliedly under her safe conduct and he is entitled to the same protection as if the writ itself had been made out in which case he could be protected from suit. (*a*) *

Secondly, the subject matter of the suit is not one which is within the limits of forensic jurisdiction. It is one of an imperial and political nature, the guardianship is a legitimate act of State emanating from the Germanic body, of which Brunswick is a Component part. The Court is incompetent to deal with it.

Thirdly, independently of the privileged character of the defendant and the political nature of the subject this Court has no jurisdiction in this case. Here is an act of a *forum competens* which cannot be questioned in this country; the whole matter has its locality in Brunswick and there alone must the plaintiff proceed. But the law of that country the plaintiff has been declared to be in such a state as to require a curator; until that decision has been reserved he has no *locus standi* in this Court. A lunatic cannot file a bill against his committee for an account nor can a bankrupt against his assignees Tarleton *v.* Hornby (*b*); the proper proceeding is first to supersede the commission. If these transactions had taken place on British soil, the plaintiff could not have maintained his bill until the deed of curatorship had been first set aside.

Sir John Leach was of opinion that a Foreign Sovereign could both sue and be sued. In Hovenden's Supplement to Vesey Junior it is stated that in a note to the case of the Nabob of the Carnatic *v.* The East India Company, "That a political treaty, between Sovereigns or parties exercising Sovereign authority cannot be the subject of municipal jurisdiction but that its observance or neglect must depend on that respect which the parties bound thereby can be made to feel for the *jus gentium* is established by the final result of this case. Lord Rosslyn even though it is doubtful whether in any case a Foreign

(*a*) * Registrum Brevium, 23, *volumus etiam quod idem W interim si quietus de omnibus placitis et querelis*, etc.

(*b*) 1 Y. & Coll. (Exch.) 172, 33.

Sovereign could sue or be sued in a Municipal Court of this country; Barclay *v.* Russell, but in De La Torre *v.* Bernales, Sir John Leach, V.C. (on the 22nd April 1818 ordered the King of Spain to be named as a party to that suit, the object of which was to charge the defendant, Bernales in respect of acts done by him as agent of that King; and on subsequent occasion (18th March 1819) when the same cause was under discussion His Honour distinctly laid it down that a foreign government or sovereign could both sue and be sued in the Courts of this country. This determination is perfectly consistent with the principal case understanding the Vice-Chancellor to allude not to federal agreements bearing a political character but only to personal demands of a private nature and to cases where the fund or the accountable parties are within reach of the jurisdiction.

The instances of ambassadors do not apply; their immunity arises from the necessity of their perfect freedom when negotiating between two countries. It is not suggested that the defendant came here for any such a purpose or otherwise than to exercise his rights of British subject as a Peer of the realm. The defendant claims an entire immunity but ambassadors are not in all cases privileged as if they are traders, or are subjects to the country to which they are accredited.

It is said that the consequences of the restraint to which Sovereigns would be exposed on a disobedience to the process should be prevent this Court interfering.

The Master of the Rolls.

In support of this demurrer for want of jurisdiction the following are amongst the principal propositions advanced on behalf of the defendant:—

First—He is admitted by the bill to be the King of Hanover, a Sovereign Prince recognised as such by the Crown of England. As a Sovereign Prince his person is inviolable and he is not liable to be sued in any Court.

Second—The inviolability of a Sovereign Prince is not confined to his own dominions but attends him everywhere (*Juriscon-*

sulti melioris notea negant Principem extra ditionem suam mere privatum esse, etc., Zouch, 63). Though a King be in a foreign kingdom yet he is judged in law a King. (Calvin's case 7 Coke 15 b.)

Third—His inviolability is not affected by his being temporarily resident in a foreign kingdom of which he is a subject. The defendant is not the less a Sovereign Prince and not the less exempt from being sued in any court here, though he is a subject of the Queen and a Peer of the realm.

Fourth—Even if the defendant should be held liable to be sued for some things in this country, he ought not to be held liable to be sued in respect of the particular subject matter of this suit, which is alleged to be matter of State and not matter of forensic jurisdiction.

Fifth—And last, even if the defendant should be held to be liable to be sued here and if the subject matter of the suit should be held to be matter of forensic jurisdiction yet that it is not matter subject to the jurisdiction of this Court, but is matter which must be deemed to be subject to the jurisdiction of some Court of special and peculiar jurisdiction such as in this country are matters arising in lunacy, bankruptcy and various other matters, which although proper subjects of forensic jurisdiction can only be adjudicated upon, in Courts specially appointed for the purpose.

On the other hand the following are amongst the principal propositions advanced in support of the bill on behalf of the plaintiff :—

First—This ought to be considered as an ordinary suit between subject and subject. The plaintiff and the defendant are lineal descendants of the Princess Sophia, Electress and Duchess Dowager of Hanover and as such are to all intents and purposes, to be deemed natural-born subject of this realm. The plaintiff is domiciled here. The defendant was born here, is an English Peer and has taken the oath of allegiance.

Second—No English subject can withdraw from his allegiance and subjection to the laws of the land. His becoming a Sovereign

Prince of another country can make no difference in this respect; he remains an English subject and is bound to obey the laws of England.

Third—The Law of England affords no authority for the proposition that Sovereign Princes resident here may not be sued in the Courts here, and there are dicta to the contrary, as in Calvin's case it is said that "if a King of a foreign nation came into England by the leave of the King of this realm, as it ought to be in this case, he shall sue and be sued in the name of King" and it is reported in the case of D La Torre *v.* Bernales, that Sir Leach stated it to be his opinion that Foreign Sovereigns could both sue and be sued in this country. In support of this proposition reference was made to proceedings in which John Baliol, King of Scotland, was summoned to answer a charge made against him in the Court of Edward I, King of England; and to proceedings in which Edward I, King of England, was summoned to answer a charge made against him in the Court of Philip Le Bel, King of France, at Paris. But these cases have nothing to do with the question; they were respectively adopted in virtue of and for the purpose of enforcing the feudal superiority which Edward I claimed to have over the Kingdom of Scotland and the superiority which the King of France had over the province of Guienne.

Fourth—Liability to suit does not necessarily involve liability to coercion. The defendant as an English Peer is by privilege protected from personal coercion; and even if a Sovereign Prince without such peculiar privilege were a defendant here, this Court has power so to modify its process as, at the same time, to do justice to the plaintiff and have due regard to the person and dignity of the defendant.

Fifth—The Law of Nations, the general law and the common interest of all mankind is, that justice should be done all over the world. The right of a suitor here is not to be impeded by the assertion of an unrecognised privileg ein any person against whom he has a legal demand.

Sixth—The Queen of England is liable to be sued in a proper

form—a form not applicable to a Foreign Sovereign, but if a Foreign Sovereign were not liable to be sued here, he would be placed in a better situation than our own Sovereign which it is said would be absurd.

These propositions are all of them more or less important to be considered on the present occasion and I have thought it convenient to enumerate them, although I shall not have occasion to observe upon them all, in stating the grounds of the opinion which I have formed upon this demurrer.

The general proposition of the defendant is, that by reason of his character of a Sovereign Prince, he is exempt from the jurisdiction of any tribunal or Court in this country.

His limited or modified proposition adapted to the specialities of the present case is, that he is exempt from the jurisdiction of any tribunal in this country in respect of acts done in a foreign country under foreign authority and in no way connected with his own character of English Peer and English subject.

It has been fully established that a Foreign Sovereign may sue in this country both at law and in equity; and further that if he sues in a Court of equity he submits himself to the jurisdiction of the Court. A cross bill may be filed against him and he must put in his answer thereto, not by any officer, agent, or substitute, but personally upon his own oath. The King of Spain *v.* Hullett.

Lord Redesdale considered that, to refuse a Foreign Sovereign the right of suing in our Courts might be a just cause of war; and the liability of a Foreign Sovereign to be sued in a case where he himself was suing here was considered to be founded upon the principle that by suing here he had submitted himself to the jurisdiction of the Court in which he sued. The decision is in accordance with the rules of the civil law. The *Reconventio* is a species of defence and *Qui non cogitorin aliquo loco judicum pati, si ipse ibi agat, cogitur excipere actiones ed ad eundem judicem mitte.*

There have been cases in which this Court being called upon to distribute a fund in which some Foreign Sovereign or State

may had an interest, it has been thought expedient and proper, in order to a due distribution of the fund, to make such Sovereign or State a party. The effect has been to make the suit perfect as to parties, but as to the Sovereign or State made a defendant in cases of that kind the effect has not been to compel or attempt to compel such Sovereign or State to come in and submit to judgment in the ordinary course, but to give the Sovereign an opportunity to come in, to claim his right or establish his interest in the subject matter of the suit. Coming in to make his claim he would by doing so submit himself to the jurisdiction of the Court in that matter; refusing to come in, he might perhaps be precluded from establishing any claim to the same interest in another form. So where a defendant in this country is called upon to account for some matter in respect of which he has acted as agent for a Foreign Sovereign, the suit would not be perfect as to parties unless the Foreign Sovereign were formally a defendant and by making him a party an opportunity is afforded him of defending himself instead of leaving the defence to his agent, and he may come in if he pleases; in such a case if he refuses to come in, he may perhaps be held bound by the decision against his agent.

There may be other cases in which Sovereign Princes for the sake of having a claim or right determined may have been afforded an opportunity of appearing and may have voluntarily appeared as defendants before the tribunal of this country, but save in the case of a cross bill or bill of discovery in aid of a defence and in the case of Sovereign Prince voluntarily coming in to make or resist a claim it does not appear how he can be effectually cited, or what control the Court can have over him or his rights; and no case has been determined that a Foreign Sovereign, not himself a plaintiff or claimant and insisting upon his alleged right to be exempt from the jurisdiction of the ordinary courts, has been held bound to submit to it.

On the other hand no case has been produced in which upon the question properly raised it has been held that a Sovereign Prince resident within the dominions of another Prince is exempt

from the jurisdiction of the country in which he is. In the case of Glyn *v.* Soares the question was not mooted at the bar. Lord Abinger took it into consideration and distinctly expressed his opinion that as a general proposition a Sovereign Prince could not be made amenable to any Court of Judicature in this country, and upon this occasion the defendant insists upon it as a general rule that in times of peace at least a Sovereign Prince is by the Law of Nations inviolable; that obvious inconveniences and the greatest danger of war would arise from any attempt to compel obedience to any process or order of any Court by any proceeding against either the person or the property of a Sovereign Prince and indeed that any such attempt would be deemed a hostile aggression not only against the Sovereign Prince himself but also against the State and people of which he is the Sovereign; that is the policy of the law (to be everywhere taken notice of), that such risks ought to be avoided and that this view of the subject ought of itself to induce the Court to allow this demurrer.

If a Foreign Sovereign could be made personally amenable to the Courts of a country in which he happened to reside, he must be subject to the ordinary process of the Courts, and if not protected by any privilege legally established by the law of England, he would, in this country, be subject to the execution of writs of attachment and *ne exeat regno* and other processes upon which he might be arrested, and upon this the counsel of the defendant cited the opinion of Vattel, who considered it to be a ridiculous notion and an absurdity to think that a Sovereign who enters a foreign country, even without permission, might be arrested there.

It was attempted to meet the force of this argument, by alleging that this Court had authority to modify the means of executing its process and compelling obedience to its orders so as to suit the rank or dignity of particular defendants; but this allegation was not supported by any authority, or by reference to any known law or practice of the Court. In the case of the King of Spain it was stated that his right "in respect

of privilege was not greater than that of any of his subject"; and the Lord Chancellor said: "The King of Spain sues here by his title of Sovereign and so he must be sued if at all; but beyond the mere name of sovereign it has no effect. He brings with him no privileges which exempt him from the common fare of other suitors." I am of opinion that the only exemptions from the ordinary effects of the process of this Court are privileges which have recognised legal origin and no others can be allowed.

To shew that a Sovereign Prince carries his prerogative with him into the dominions of other princes, reference was made to the case of Ingelram De Nogent, stated in Fleta. This man was an attendant upon Edward I, King of England, when in France; he committed a theft there and was apprehended for it by the French, but the King of England required to have him redelivered being his subject and of his train and after discussion in the Parliament of Paris he was sent to the King of England to do his own justice upon him; whereupon he was tried before the steward and marshal of the King of England's house and executed in France. At a more recent period Monadeschi, an attendant upon Christiana, the abdicated Queen of Sweden, was, by her orders, put to death within her residence in France, a fact in itself atrocious but which was not seriously resented by France; and it is said to have been afterwards defended by great authority. Bynkershoeck speaks of it thus: "*Quod factum Galli, quamvis indignabundi, impune transmiserunt, ex impotentia, ut optumum maxumumque est.*"

But I own that with reference to the present case I do not attach much importance to instances of this sort. The doctrine or fiction which has been expounded by some writers on the Law of Nations under the name of extra territoriality, if it were carried out to its legitimate consequences would, as it appears to me, render it highly dangerous for the Sovereign of any country to admit within his dominions any Foreign Sovereign or even any ambassador of a Foreign Sovereign. It is admitted that the extent to which the doctrine should be carried out, must be

subject to great modifications, and I do not think that it affords any assistance in the practical consideration of the question: what are the exemptions or privileges which ought by the Law of Nations to be allowed to a Foreign Sovereign temporarily resident within the dominions of another Prince.

Another argument for the defendant was that a Sovereign coming from his own dominions into his country attending the Court of the Queen and sitting in Parliament must be deemed to have come with the consent of the Queen and to have been entitled to a safe conduct which would have contained a prohibition to sue him in any Court; that therefore the defendant ought to be deemed to have come and resided here on the faith of such right which he is not the less entitled to, because the letters of safe conduct were not actually applied for and issued. This argument assumes that letters of safe conduct such as might and lawfully ought to be issued at this time and on the occasion of such a visit as that made to this country by the King of Hanover would have contained a prohibition to prosecute such a suit as this.

But the argument for the defendant which appears to me to be the most important was founded upon analogy to the immunities of ambassadors recognised and declared to be in accordance with the Law of England, by the statute 7 Ann. C. 12. .

But by that statute it was declared "that all writs and processes sued forth and prosecuted, whereby the person of any ambassador for any Foreign Prince authorised and received as such by Her Majesty may be arrested or imprisoned or his goods distrained, seized or attached shall be deemed to be utterly null and void": and after a penal clause affecting any person who may sue out any such writ or process, there is a proviso that no merchant or trader within the description of the statute against bankrupts, who puts himself into the service of any ambassador shall have or take any benefit by the act.

It is argued that the Law of Nations and the law of the land having granted such immunities to ambassadors the mere

envoys and agents of Sovereign Princes cannot have refused at least equal immunities to the Sovereigns themselves on whose account the immunities to ambassadors were given. If it be right, as it is universally admitted to be, that ambassadors should have such immunities, it must *a fortiori* be right that Princes should have them; and thus it is argued that because ambassadors are held to be inviolable in the countries where they reside, Princes ought also to be so.

But on the part of the plaintiff this is denied and it is said that we must look at the reason of the law. An ambassador who comes into a foreign State on the business of his Sovereign which cannot be transacted without entire freedom and independence on his part, must be allowed privileges which are in no way required for the protection or accommodation of a Prince who comes on a visit of pleasure or compliment; and moreover that the immunity of an ambassador does not extend to every suit of every kind. There are exceptions depending on the peculiar liabilities or obligations of the person, or on the nature of the transaction; and it cannot be inferred that because an ambassador is in some or many cases exempt from suit, that therefore a Sovereign Prince is exempt from suit in all cases.

The question upon the demurrer is to be determined by that which may be thought to be the Law of Nations applicable to the case; there is no English law applicable to the present subject unless it can be derived from the Law of Nations, which when ascertained is to be deemed part of the common Law of England.

The Law of Nations includes all regulations which have been adopted by the common consent of nations in case where such common consent is evidenced by usage or custom.

In case where no usage or custom can be found we are compelled amidst doubts and difficulties of every kind to decide in particular cases according to such light as may be afforded to use by natural reason or the dictates of that which is thought to be the policy of the law.

" . . . . . " and in the case now in question it does not appear that there have been cases or that

events have occurred from which any usage or custom of nations can be collected.

Bymkershoeck, in his Treaties De Foro Legatorum, discusses the very question which is now under consideration. . . . It is not, he says, to be supposed that the Prince went there with the intent to put off his own Sovereignty and become the subject of another ; yet what is to be done, if he commits violence or contracts debts in the country where he is ; this, he says, will depend on the Law of Nations adopted from reason and mutua consent and established by usage. *If we consult reason much is to be said on either side. If a prince in the dominions of another becomes a robber, homicide or conspirator, is he to escape with impunity? If he extorts money or becomes indebted, is he to be permitted to carry home his plunder?* It is, he says, difficult to admit that, and yet, on the other hand, is that which reason and the consent of all nations has granted to ambassadors because they represent a Prince and obey his orders to be refused to the Prince himself perhaps transacting his own affairs? Is the sanctit yof the Prince less than that of his ambassador?

In a case where there is no precedent, no positive law, no evidence of the common consent of nations, no usage which can be relied on—where reasons important and plausible was arrayed in opposition to each other—and where no clear and decided preponderance is to be found, it seems reasonable to endeavour to borrow for our guidance such light, however feeble and uncertain, as may be afforded by analogous cases from whence have been derived rules adopted with great thought and perfect uniformity by all nations.

It is true that a decision derived from principles supported by analogous case alone cannot entirely be satisfactory, and yet it may be the best the most satisfactory which the nature of the case admits of.

It will be more satisfactory in proportion to the clearness of the analogy between the cases under consideration.

It must be admitted that all the reasons assigned for the immunity of ambassadors are not applicable to the case of

Sovereign Princes; and it has been truly observed that an ambassador if exempt from the coercive power of the law in the country where he may nevertheless be compelled to submit to justice by his Prince in his own country; but that if you exonerate the Prince himself justice fails altogether, but in ultimate effect the cases come very nearly to the same result. The Prince not being subject to a foreign power may refuse to compel his ambassador to do justice or may refuse to do the justice declared by a foreign tribunal when requested by a foreign power, and the refusal in either case becomes a ground of imputation against the Prince who refuses and may give rise to those irritations which are so apt to prove incentives to war. Investigate the subject as we may, considerations of this sort press upon us. Whilst a prevailing respect for humanity and justice resides in the breasts of Princes and when there is consent as to the means of ascertaining and promoting the ends of justice in particular cases, it is well; but in the last result of any inquiry on the subject we find that in the absence of moral sanctions and treaty, war and reprisal (*i.e.*, war again in a particular form) are the sanctions of that which is called the Law of Nations.

If we hold Sovereign Princes to be amenable to the Courts of this country the order and decrees which may be made cannot be executed by the ordinary means. Where is the power which can enforce obedience? If accidental circumstances should give the power and if for the supposed purposes of justice an attempt were made to compel the obedience of a Sovereign Prince to any process, order or judgment, he and the nation of which he is the head and probably all other Princes and the nations of which they are the heads, would see, in the attempt, nothing but hostile aggression upon the inviolability which all claim as the requisite of their Sovereign and national independence. On the other hand if the jurisdiction of the Courts against Sovereign Princes be excluded, we are, on the institution of a claim, very nearly though not quite in the state to which we are brought by the process, order or judgment, on the former

supposition. The State may have to seek redress for the injured subject and justice is to be requested for a Prince or Chief against whom you have no ordinary means of enforcing it. It may be refused acquiescence, in the refusal is the abandonment of justice and pressure after refusal implies an imputation and gives rise to discussions and irritations which may again prove incentives to war. Justice can be peaceably and effectually administered only where there is recognised authority and adequate power. What is to be done in cases where there is no power to enforce it?

It must be admitted that the subject is replete with difficulties. These difficulties and the importance of maintaining the legal inviolability of Foreign Princes can scarcely be shown more strongly than by adverting to the opinions which have been expressed by eminent jurists, that offences committed by Sovereign Princes in Foreign States *ought rather to be treated as causes of war than as violations of the law of the country where they are committed and ought rather to be checked by vengeance and making war on the offender than by any attempt to obtain justice through lawful means.*

When great and eminent lawyers, men of experience and reflection so express themselves as to shew their opinion that less mischief would ensue from the unrestrained and irregular vengeance of individuals and of the multitude, than from attempts to bring Sovereign Princes to judgment in the ordinary Courts of a foreign country where they have offended however much we may lament that such should be the condition of the world we may be sure of the sense which they entertained of the difficulty of making and of the danger of attempting to make Sovereign Princes amenable to the Courts of justice of the country in which they happen to be.

After giving to the subject the best consideration in my power it appears to me that all the reasons upon which the immunities of ambassadors are founded do not apply to the case of Sovereigns, but that there are reasons for the immunities of Sovereign Princes at least as strong if not much stonger than

any which have been advanced for the immunities of ambassadors; that suits against Sovereign Princes of foreign countries must, in all ordinary cases in which orders or declarations of right may be made, end in requests of justice which might be made without any suit at all; that even the failure of justice in some particular cases would be less prejudicial than attempts to obtain it by violating immunities thought necessary to the independence of Princes and nations, I think that on the whole it ought to be considered as a general rule in accordance with the Law of Nations that a Sovereign Prince resident in the dominions of another is exempt from the jurisdiction of the Courts there.

It is true as we argued for the plaintiff that the common interest of mankind requires that justice should everywhere be done and that for the attainment of justice all persons should be amenable to the courts of justice in the country where they are. Such is the general rule; but in the cases where either party has no superior by whom obedience can be compelled, where the execution of justice is not provided for by treaty and cannot be enforced by the authority of the judge and where an attempt to enforce it by the authority of the State may probably become a cause of war; the same common interest which is the foundation of the rule, requires that some exception should be made to it and that exception if the general rule with respect to Sovereign Princes.

The question then arises whether the exception in favour of Sovereign Princes, and the exemption from suit thereby allowed is to be entire and universal or subject to any and what limitations.

The Act of Parliament relating to ambassadors professes to be and has frequently been adjudged to be declaratory and in confirmation of the common law; and as Lord Tenterden said, "it must be construed according to the common law which the Law of Nations must be deemed a part."

And presuming from this view of what is considered to be the Law of Nations that with respect to the immunity of an

ambassador who is a subject in the country of his residence, it must be distinguished what acts of his were connected with or required for the discharge of the duties of his ministry and what were not; and that with regard to acts connected with his ministry the Courts (considering his character of ambassador) would hold him to be exempt from suit; but that with regard to acts not connected with his ministry, the Courts (considering his character of subject) would hold him liable to suit. The enquiry is whether in like manner a Sovereign Prince resident in the dominions of another Prince whose subject he is may not justly and reasonably be held free from suit in all matters connected with his Sovereignty and his rights, duties and acts as Sovereign and yet be held liable to suit in respect to all matters unconnected with his Sovereignty and arising wholly in the country to the Sovereign of which he is a subject.

The first and most general rule is that all persons should be amenable to courts of justice and should be liable to be sued. A consideration of the policy of the law creates an exception in the case of Sovereign Princes. May not a further consideration of the policy of the law create a modification or limitation of the exception in the case of Sovereign Princes who are subjects?

There are in Europe other Sovereign Princes who if not now have been subjects of the country of their origin or adoption. Upon such question as this I cannot discharge those cases, but they may have their specialities of which I am not aware.

The Law of England admits the legal inviolability of the Sovereign requiring at the same time the legal responsibility of those who advise the Sovereign. Can the Law of England in any individual case, admit the strange anomaly of an inviolable adviser of an inviolable Sovereign, of a legal subjection without any legal superiority? Can any Peer or Privy Councillor, whatever station he may occupy elsewhere, be permitted to give advice of which any other Peer or any other member of the Privy Council might be justly impeached and yet hold himself exempt from the jurisdiction of the highest tribunal in the realm?

May he enter into a contract with any other subject should be compelled to perform and yet refuse to answer any claim whatever either for specific performance or for damage?

Great inconveniences may arise from the exercise of any jurisdiction in such a case. They arise perhaps inevitably from the two characters which His Majesty the King of Hanover unites in his own person and from the claim which he voluntarily makes to enjoy or exercise concurrently in this country, his rights as a Sovereign Prince and also his rights as an English subject, Peer and Privy Councillor. He is a Sovereign Prince and as such inviolable in his own dominions and I presume, also in the dominions of every other Prince to whom he is not a subject. Remaining in his own dominions or in the dominions of any other Prince to whom he is not a subject, he would, I presume, be exempt from all forensic jurisdiction. But he comes to this country where he is a subject and claims and exercises his rights as such. As a subject he owes duties correlative to which not individuals only but the country at large may have legal rights, which are to be respected and being legal rights against a subject in respect of his acts and duties as a subject it seems that they ought as necessary and practicable to be vindicated and enforced by the law. Those legal rights would be nugatory if his inviolability as a Sovereign Prince would admit of no exception or modification. But any contradiction or inconsistency may be obviated by distinguishing, as in the analogous case of the ambassador, the acts which ought to be attributed to one character or the other and it appears to me that when necessary it must be the office and duty of the Courts to make the distinction.

If the distinction can justly be made, why should it not and why should not the jurisdiction be exercised so far as the circumstances of the case will allow?

Admitting it to be the general rule that Sovereign Princes are not liable to be sued and that all Sovereign Princes may consider themselves interested to maintain the inviolability which each one claims, and that any aggression upon it might

in ordinary circumstances be a cause of war; yet observing what is stated to be the Law of Nations in the case of ambassadors conceiving that a rule applicable only to the case of Sovereigns who are subjects and think fit actively to exercise their rights as subjects cannot have any extensive application and is not likely to excite any general interest or any alarm and having regard to that which is absolutely required to maintain the relation of sovereign and subject in any country, I am of opinion that no complaint can justly or will probably arise from any legal proceeding the object of which is to compel as far as practically may be, a Sovereign Prince residing in the territory of another Prince whose subject he is to perform the duties of a subject, in relation to his own acts done in the character of subject only.

'And admitting that, in ordinary cases, it may happen that the execution of a decree cannot be enforced against a Sovereign Prince though a subject of this realm, I do not think that, for that reason, a plaintiff should be deprived of all means of establishing his right in a due course of procedure; I do not think that I ought to presume that a Sovereign Prince, who deems it to be consistent with his dignity and interest to come here and practically exercise the rights of an English subject, will not also deem it consistent with his dignity and interest to yield willing obedience to the Law of England when duly declared.

And for these reasons I am of opinion that His Majesty the King of Hanover is and ought to be exempt from all liability of being sued in the Courts of this country, for any acts done by him as King of Hanover or in his character of Sovereign Prince, but that, being a subject of the Queen, he is and ought to be liable to be sued in the Courts of this country in respect of any acts and transactions done by him or in which he may have been engaged as such subject.

And in respect of any act done out of this realm or any act as to which it may be doubtful whether it ought to be attributed to the character of Sovereign or to the character of subject, it appears to me that it ought to be presumed to be attributable

rather to the character of Sovereign than to the character of subject.

And it further appears to me that in a suit in this Court against a Sovereign Prince who is also a subject, the bill ought, upon the face of it, to shew that the subject-matter of it constitutes a case in which a Sovereign Prince is liable to be sued as a subject.

I cannot, therefore, consider the present suit as an ordinary suit between subject and subject; it is a suit against a defendant who is *prima facie* entitled to special immunities and it ought to appear on the bill that the case made by it is a case to which the special immunities are not to be extended.

What is shewn is that the defendant is an English subject and may therefore not be exempt from suit in some cases. Is it shewn that this is one of the cases in which the defendant is liable to be sued?

The object of the suit is to obtain an account of property belonging to the plaintiff alleged to have been possessed by the defendant under colour of an instrument creating a species of guardianship unknown to the Law of England. It is not pretended that any one act was done or that any one receipt in respect of which the account is asked was made in this country. Every act alleged as a ground of complaint was done abroad in Brunswick, in Hanover or elsewhere in foreign countries. No act alleged as a ground of complaint was done by the defendant before he became King of Hanover and from the nature of the transaction and the recitals in this instrument there are strong grounds to presume that it was only by reason of his being King of Hanover, that the defendant was appointed guardian of the plaintiff's fortune and property. It is not pretended that the instrument has been impeached or attempted to be impeached in the country where alone it has its locality and operation although it is alleged to be illegal there, and no reason is given why the plaintiff has not availed himself of that illegality to obtain relief from it.

It is alleged to be null and void here; and upon this I may

observe that although with regard to English instruments intended to operate according to English Law, the Court knowing the nature of the instrument, the relation between the parties to it and the law applicable to the case, may be able even the demurrer in a simple case to adjudicate thereon upon a mere allegation that the instrument is null and void, yet that with regard to a foreign instrument intending to operate according to a law not known in England and which as foreign law is to be proved as a fact in the cause an allegation that the instrument is void is too vague. But passing that over and considering the other matters which I have mentioned and observing notwithstanding the allegation at the bar that the instrument complained of is wholly independent of any political or State transaction it is in the bill stated as the sequel to a political revolution which resulted in the deposition of a Sovereign Prince and the appointment of a successor made under the authority of a decree of the Germanic Diet by the late King of Hanover and the reigning Duke of Brunswick; considering also that the instrument stated as the sequel of these political proceedings (which I must consider to be either wholly immaterial or as introduced into the bill for the purpose of shewing the character of the transaction in question) is stated to have been executed by the late King of Hanover and the reigning Duke of Brunswick and considering further the objects for which the instrument is purported to have been executed connecting those objects with the political transactions stated in the bill and the transactions alleged to have taken place at Osterode in 1830 I should be disposed to think that the instrument complained of is connected with political and State transactions and is itself what in common parlance is said to be a State document and evidence of an act of State.

But upon this occasion it is not necessary for me to give any opinion upon the question whether the act complained of is or is not an act of State or upon the question which seems to have been raised in France whether the Courts of a foreign country ought to take notice of such an instrument for the

purpose of enabling the guardian under its authority to possess the property and effects of the plaintiff in such foreign country; it is not even necessary for me to decide the question whether as against a subject only, this Court could have any jurisdiction to give relief in respect of acts done abroad under such foreign instrument as this.

The question which I have had to consider is whether under the circumstances of this case and as against a Sovereign Prince who is a subject of the Queen this Court has the jurisdiction which is attributed to it by this bill.

And I am of opinion that the alleged acts and transactions of the defendant under colour or under the authority of the instrument in question are not acts and transactions in respect of which the defendant is liable to be sued in this Court or in respect of which this Court has any jurisdiction over him.

Let this demurrer, therefore, be allowed.

"The Jurist," 1847.

TRINITY TERM.

Munden v. The Duke of Brunswick.

Declaration on the Annuity Deed.—Plea to the jurisdiction because defendant at the time of making the deed was a Sovereign Prince; that the deed was made by him within his dominions and that at the time of the commencement of the suit he was and still is entitled to all the rights, prerogatives and privileges appertaining to him as such and that by reason thereof he ought not to be compelled to answer before any Court whatsoever: Held that the plea was bad for not staying that defendant was a Sovereign Prince at the time of commencing the suit or of plea pleaded.

Semble, the defence that the contract was made by defendant in character of a Sovereign Prince would be a good plea in bar, but not a good plea to the jurisdiction.

The defendant is not liable to be sued for an act done by him as Sovereign Prince in his own dominions. It is not traversed

that the defendant is entitled to the Sovereignty of Brunswick and Lunebruge; and being a Sovereign Prince the presumption is that the act in question was done by him in that character notwithstanding the allegation in the replication as to its being a private debt. The plaintiff ought to have shewn that the defendant was liable to be sued for it in his own country. (Melan *v.* The Duke of Fitzjames, 1 B. & P. 133.) The action will not lie merely because the defendant has come into this country (The Duke of Brunswick *v.* The King of Hanover, 6 Beav. 1), where the act was one of the State.

The Duke of Brunswick *v.* The King of Hanover was determined on the distinction whether the act there in question was done by the defendant as a British subject; the Master of the Rolls did not feel it necessary to determine whether it was an act of State. The defendant is only amenable to the Courts of this country for acts done by him as a subject of this country whether done in his own dominions or elsewhere. It is sufficiently averred that his status at the time for the execution of the deed continued; and if it had ceased still he will not be liable. Further the plea is properly a plea to the jurisdiction. There is no analogy between such a plea and the ordinary pleas in abatement, it cannot give a better writ because the essence of it is that the defendant cannot be sued anywhere. It is like a plea of privilege claiming personal exemption from the jurisdiction of the Court. (Hunter *v.* Neck, 3 Scott, N. R. 443.) A defendant *primâ facie* liable to be sued would be bound to submit to this Court the question as to the validity of the contract, but a Sovereign Prince has a paramount exemption and is not liable under any circumstances and he is not bound to submit to the Courts of this country. [Patteson, J.—in Wood *v.* Byng (3 Moore's Priv. Coun. Rep. 466)—it is stated as national law that no Sovereign Prince can be sued. Wighman, J.—A plea to the jurisdiction does not give a better writ; a plea of personal privilege concludes *respondere non debet.*]

Lord Demnan, C.J., now delivered the judgment of the Court. We think the defendant's plea is bad for not stating

that he was a Sovereign at the time of commencing the suit or of plea pleaded. That he was a Sovereign Prince when he made the contract is an immaterial fact; that he is justly entitled to the privileges and a prerogative belonging to that character is merely his opinion of his rights an opinion which he might hold though he had formally abdicated his Sovereignty and most probably would hold if he had been an usurper in the temporary occupation of royal power justly driven by the legitimate ruler from the realm.

If indeed being Sovereign Prince *de facto* he had in that character made such a contract with the plaintiff and so had not bound himself as an individual that might perhaps constitute a good defence to the action, not a good plea to the jurisdiction. But Sovereign Princes may contract obligations in their private capacity on considerations purely personal. Whether by the laws of their own country these might be there enforced, we have no means of knowing —there is no presumption either way. Neither is there any presumption that this contract is an act of State; the contrary would be more naturally inferred from the nature of it. Without any averment to that effect the plea tells us nothing but that the defendant when for good consideration, he entered into a certain contract was a Sovereign Prince. This is clearly insufficient.—*Judgment for plaintiff.*

"The Jurist," 1852—Reports of Cases.

COURT OF QUEEN'S BENCH.

Trinity Term.

De Haber v. *The Queen of Portugal*; *Wadsworth* v. *The Queen of Spain—May* 18, 1851.

Action against Foreign Potentate—Prohibition upon the Application of a Stranger—Plea to the Jurisdiction in the Inferior Court—Foreign Attachment.

An action cannot be maintained in any English Court against a foreign Potentate for any thing done or omitted to be done by him in his public capacity as Representative of the Nation of which he is the head; and no English Court

has jurisdiction to entertain any complaints against him in that capacity.

Where an inferior Court exceeds its jurisdiction this Court is bound to interfere by prohibition upon the application of a stranger as well as of the defendant himself.

Where an inferior Court has no jurisdiction to entertain a Cause it is not necessary to entitle a party to a prohibition that the objection to the want of jurisdiction should have been made in the inferior Court and overruled.

A plaint was entered in the Court of the Lord Mayor of London against the Queen of Portugal "as reigning Sovereign and supreme head of the Nation of Portugal" to recover a debt alleged to be due from the Portuguese Government and a Foreign Attachment has issued:—Held that the awarding of the attachment was an excess of jurisdiction on the ground that the defendant was sued as a Foreign Potentate.

So where a plaint was entered in the Court of the Lord Mayor of London against the Queen of Spain upon a Spanish Government bond in the forms of debenture entitled "Public Debt of Spain signed by an Officer of the Government of the Spain as Contractor and purporting to have been issued under a Decree of the Courts sanctioned by the Regent of Spain in the name of the Queen, then a minor, and a Foreign Attachment issued against her.

Held also that prohibition might be granted on the application of the defendant before she appeared in the Lord Mayor's Court or on the application of the garnishee after he had pleaded *nil Habet.*

The process of foreign attachment can only be duly resorted to when the cause of action arose within the jurisdiction of the Court from which it issues.

Lord Campbell, C.J., now delivered the judgment of the Court:—We are of opinion that the rule for a prohibition in this case ought to be made absolute.

The plaintiff has commenced an action of debt in the Court of

Lord Mayor of London against Her Majesty Donna Maria da Gloria, Queen of Portugal as reigning sovereign and supreme head of the nation of Portugal; and by an affidavit laid before us it appears that the plaintiff's alleged cause of action is in respect of a sum of Portuguese money equivalent to £12,135 sterling which he has in the hands of one Francisco Ferreira of Lisbon, banker, at the period when Don Miguel pretending to the Crown of Portugal was driven out of that country and which was by the said Francisco Ferreira paid over to the Portuguese Government now represented by the Royal defendant. The plaintiff having entered his plaint proceeded according to the custom of foreign attachment in the City of London as if the defendant were subject to the jurisdiction of the Lord Mayor's Court and the cause of action had arisen within that jurisdiction; and he sued out a summons for the defendant "to appear and answer the plaintiff in the plea aforesaid." A return being made by the serjeant-at-mace, "and the said defendant had nothing within the said city or liberties thereof whereby she can be summoned nor was to be found within the same" the plaintiff swore an affidavit in which he stated that the defendant "as reigning Sovereign and as supreme head of the nation of Portugal is justly and truly indebted to him in the sum of £12,136 for money had and received by her said Majesty Donna Maria da Gloria, Queen of Portugal, for and on behalf of the said nation of Portugal for his use and for money taken by her said Majesty Donna Maria da Gloria, Queen of Portugal, from this defendant's banker with interest thereon."

The defendant being solemnly called and not appearing before the Lord Mayor, the plaintiff alleged by his attorney, "that Senhor Guillieme Candida Xavier de Broti of the City of London the garnishee had money, goods and effects of the defendant in his hands and prayed process according to the said custom to attach the said defendant by the said money, goods and effects in the hands of the garnishee as aforesaid so that the defendant may appear in the Lord Mayor's Court to answer the plaintiff in the plea aforesaid". Thereupon the Judge presiding in that

Court awarded an attachment against the defendant as prayed directed to the serjeant-at-mace which that officer immediately executed leaving with the garnishee a notice in the terms following :—(His Lordship read it.)

On the second day of Easter Term this rule for a prohibition was applied for and obtained on behalf of the Queen of Portugal.

Cause being shewn against this rule and a similar rule and a similar action brought against Her Most Faithful Majesty the Queen of Spain, various questions respecting foreign attachment were discussed which we do not feel it necessary to determine as we think that upon simple and clear grounds there has here been an excess of jurisdiction by the Court of the Lord Mayor of London against which we are bound to grant a prohibition at the prayer of the defendant.

In the first place it is quite certain upon general principles and upon the authority of the case of the Duke of Brunswick *v.* The King of Hanover recently decided in the House of Lords (2 H. L. C. 1) that an action cannot be maintained in any English Court against a foreign potentate for anything done or omitted to be done by him in his public capacity as representative of the nation of which he is the head and that no English Court has jurisdiction to entertain any complaints against him in that capacity. Redress of such complaints affecting a British subject is only to be obtained by the laws and tribunals of the country which the foreign potentate rules or by the representations, remonstrances or acts of the British Government. To cite a foreign potentate in a Municipal Court for any complaint against him in his public capacity is contrary to the Law of Nations and an insult which he is entitled to resent.

The stat. 7 Ann. C. 12 passed on the arrest of the Russian ambassador to appease the Czar has always been said to be merely declaratory of the Law of Nations recognised and enforced by our Municipal Law ; and it provides (sec. 3) " that all process whereby the person of any ambassador or of his domestic servant may be arrested or his goods distrained, seized or attached shall

be utterly null and void". On the occasion of the outrage which gave rise to the statute Lord Holt was present as a Privy Councillor to advise the Government as to the fit steps to be taken and with his sanction seventeen persons who had been concerned in arresting the ambassador were committed to prison that they might be prosecuted by information at the suit of the Attorney-General. Can we doubt that in the opinion of that great judge the Sovereign himself would have been considered entitled to the same protection, immunity and privilege as the minister who represents him?

Let us see then what has been done by the Lord Mayor of London. On a plaint being entered in his Court against "Donna Maria da Gloria as a reigning Sovereign and supreme head of the nation of Portugal" for what she had done "for and on behalf of the said nation" he summons her to appear before him and she being solemnly called and making default he with full knowledge that she was so sued issues an attachment against her for this default to compel her to appear. Under this attachment all her money, goods and effects within the city and liberties of London are ordered to be seized. If she does not obey the mandate within a year and a day these funds are to be confiscated or applied to the satisfaction of the plaintiff's demand without any proof of its being justly due and she can only get rid of the attachment by giving bail to pay the sum which the plaintiff may recover or to render himself to prison, that she may be committed to the Poultry or Giltspur-street Compter. The attachment applies not only to all the monies, goods and effects of the Queen of Portugal then in the hands of the garnishee but to all that shall thereafter come into his hands. The process is studiously framed to be applicable to property of the Queen as "supreme head of the Portuguese nation". It appears from the affidavit that the plaintiff had entered a former plaint against the Queen of Portugal which he suggested was against her individual capacity; that upon an attachment the garnishee pleaded *nil habet*; and that upon this issue the jury found a verdict for the garnishee because all the money in

the hands of the garnishee were proved to belong to the defendant in her public capacity as Sovereign of the dominions which she governs. Were the garnishee now to plead *nil habet* the verdict must be against him, for the funds which he holds belong to the defendant in the capacity in which she is sued. While this attachment stands should any money raised by loan or any munitions of war purchased for the use of the Portuguese Government be found within the City of London or the liberties thereof, they are all liable to be seized for the benefit of the plaintiff.

It may be right that we should mention two authorities which we have met in our researches upon this subject although they were not referred to in the argument as they seem at variance with the opinion we have formed. Bynkershoeck in his Treatise "De foro Legatorum," c. 4, discussing the question whether the goods of a Sovereign Prince in a Foreign State are liable to be judicially arrested or attached, says. "In cause civili, cum id inter privatos obtineat, ubicsunque arresta frequentantur ego, nullus animadverto cur non idem obtinere oportear quod ad bona externorum principum. Si ab arresto principis temperemus ob sanctitatem personea, quis bona principis in alieno imperioaeque sancta esse dixerit? Usu gentium invaluit ut bona quae princeps in alterious ditione sibi comparavit, sive haereditatis, velquo alio titulo acquisivit, perinde habeantur ac bona privatorum, nec minus quam haec subjiciuntur oneribus et tributis". But this author who is well known to have an antipathy to crowned heads and to monarchical government admits that other jurists differ from him; and he goes to cite a decision in his own country which completely overturns his doctrine. "In the year 1668 certain private creditors of the King of Spain arrested three ships of war of that kingdom which had entered the port of Flushing that the pursuers might thus be obtained satisfaction for their debt; the King of Spain being cited to appear at a certain day before the judges of the Court of Flushing. But upon the remonstrance of the Spanish ambassador the States-General by a decree of the 12th December 1668 ordered the authorities in the province of Zealand to liber-

ate in the Spanish ships of war, and to allow them freely to depart; at the same time directing a representation to be made to the Spanish Government to do justice to the Dutch citizens lest it should be necessary to resort to reprisals". And there can be no doubt that according to the Law of Nations "reprisals" would be the appropriate remedy not a judicial citation before a Municipal Court to be enforced by seizure of national property.

In Selden's Table Talk (Singer's edition, p. 103) there are the following words supposed to be spoken by that profound lawyer himself:—"The King of Spain was outlawed in Westminster Hall I being of Counsel against him. A merchant had recovered costs against him in a suit which because he could not get, we advised to have him outlawed for not appearing, and so he was. As soon as Gonsomar heard that he presently sent the money, by reason, if his master had been outlawed he could not have the benefit of law, which would have been very prejudicial, there being then many suits depending between the King of Spain and our English Merchants". The fact here stated seems to have been credited by Lord Chancellor Thurlaw who in The Nabob of the Carnatic *v.* The East India Company (1 Ves. Jun. 386) observed that the King of Spain had been once outlawed by Selden's advice to prevent him from taking advantage of his suit". But he adds "the outlawry was bad enough". Otherwise we doubted whether the King of Spain ever was outlawed in the manner supposed. Legge in his Treatise on Outlawry (p. 12) alluding to it says, "This was a very strange case if for costs only, as it does not seem warrantable by law".

Such an extract from an amusing book of anecdotes cannot be considered any authority for the position that a Sovereign Prince may be sued as such in our municipal courts and that property belonging to him in his public capacity may be seized to compel an appearance. The statement is in no way authenticated by Selden himself and is merely a loose report of what is supposed to have fallen from him in conversation. If not be accurate as the outlawry is first supposed to have been for non-payment of costs; and secondly for not appearing and

according to the usual practice it could not have been in Westminster Hall. We have caused search to be made for the record that it is not forthcoming. There may *de facto* be judgment of outlawry against any Sovereign Prince who does not appear after being proclaimed the requisite numbers of times at the country court or court of hustings no enquiry being made whether the defendant be an alien or a native born Englishman, an Emperor or a peasant, but his proceedings clearly irregular and all concerned in it would be liable to punishment. Till stat. 2 and 3 Will. 4 C. 39 there could have been outlawry except upon a capias which could not be lawfully used out against a Sovereign Prince. After outlawry the outlaw is to be seized whether he can be found and imprisoned *in salva et arcta custodia* all his personal property is forfeited to the Queen of England and she is entitled to the profits of all his lands. Such a proceeding is manifestly inapplicable to a Foreign Sovereign who must be supposed to be in his own dominions and if he were in England could not be so sued without a breach of the Law of Nations and if our municipal law. The suits alleged to have been pending between the King of Spain and the English merchants, if there were any probably actions brought by him on bills of exchange or arising out of some of the commercial transactions in which His Majesty was then engaged. For such matters a Foreign Sovereign might and may, still sue in our courts of justice, but no authority can be found for his being sued here as a Sovereign.

In the case of The Prince Frederick before Lord Stowell as judge of the Admiralty the same view of the subject was taken by that greatest of jurists although from a compromise no formal judgment was pronounced. There a Dutch ship of war had been saved from shipwreck by English salvors who libelled her for the salvage. Objection being made that the Court had no jurisdiction a distinction was attempted that the salvors were not suing the King of the Netherlands and that being in possession of and having alien upon a ship which they have saved the proceeding might be considered *in rem.* But Lord Stowell

saw such insuperable difficulties in judicially assessing the amount of salvage, the payment of which was to be enforced by sale that he caused a representation to be made on the subject to the Dutch Government who very honourably consented to his disposing of the matter as an arbitrator. (The case of The Prince Frederick is not in print but we had an account of it from the Queen's Advocate.)

Notwithstanding the dictum of Bynkershoeck and the outlawry of the King of Spain supposed to be related by Selden we cannot doubt that the awarding of the attachment in the present case by the Lord Mayor's Court was an excess of jurisdiction on the ground that the defendant is sued as a foreign potentate.

Therefore the circumstance that the cause of action if there were any arose out of the jurisdiction of the Lord Mayor's Court need not be relied upon. Nevertheless after the strong assertions at the bar that this is immaterial where the defendant does not appear we think it right to say that having examined the authorities we entertain no doubt that the process of foreign attachment can only be duly resorted to when the cause of action arose within the jurisdiction of the Court from which it issues. The garnishee is safe by paying under the judgment of the Court, but the objection that the cause of action did not arise within the jurisdiction of the Court if properly taken must prevail. No agreement of counsel to abstain from making the objection can alter the law of the land which says that an inferior Court can only hold plea where the cause of action arises within the local limits to which its jurisdiction by charter or custom is confined.

We have now to consider whether we can grant the prohibition on the application of the Queen of Portugal before she appears in the Lord Mayor's Court. The plaintiff's counsel argue that before she can be heard she must appear and out in bail in the alternative to pay or to render. It would be very much to be lamented if before doing justice to her we were obliged to impose a condition upon her which would be a further indignity and a further violation of the law of the nations. If

the rule were that the application for a prohibition can only be by the defendant after appearance we should have had little scruple in making this book of the highest authority that here the Court to which the prohibition is to go has no jurisdiction a prohibition may be granted upon the request of a stranger as well as of the defendant himself. (2 Inst. 607; Com. Dig. "Prohibition" E.) The reason is that where an inferior Court exceeds its jurisdiction it is chargeable with a comtempt of the Crown as well as a grievance to the party. (Ede *v.* Jackson, Fort. 345.) Therefore this Court vested with the power of preventing all inferior Courts from exceeding their jurisdiction to the prejudice of the Queen or her subjects is bound to interfere when duly informed of such an excess of jurisdiction. What has done in this case by the Lord Mayor's Court must be considered as peculiarly in contempt of the Crown it being an insult to an independent Sovereign, giving that Sovereign just cause of complaint to the British Government and having a tendency to bring about a misunderstanding between our own gracious and her ally the Queen of Portugal.

Therefore upon the information and complaint of the Queen of Portugal either as the party grieved or as a stranger we think we are bound to correct the excess of jurisdiction brought to our notice and to prohibit the Lord Mayor's Court from proceeding further in this suit.—*Rule Absolute.*

LORD CAMPBELL, C.J. :—

This case nearly resembles that in which we have just given judgment but differs from it in two particulars; first here the plaintiff's affidavit does not expressly state that the action is brought against the defendant as reigning Sovereign and supreme head of the Spanish Nation; and secondly that the party applying is the garnishee after pleading *nil habet.*

The effect of the first difference is entirely done away with by the disclosure the plaintiff makes in the affidavit of his supposed cause of action which is on a written instrument commonly called a Spanish Government bond in the form of a debenture entitled "Public Debt of Spain" signed by an officer of the

Government of the Government of Spain as contractor and purporting to have been issued under a decree of the Courts sanctioned by the Regent of Spain in the name of her daughter the present Queen then a minor. It is quite clear that no one could pretend upon such an instrument to bring an action against the Queen of Spain as a private individual supposing that she could be sued in the Lord Mayor's Court for a debt contracted by her in London in her private capacity, she having by the constitutional laws of Spain, private property which would be answerable for such a debt.

There is here therefore an equal want of jurisdiction in the Lord Mayor's Court to entertain the suit or to summon the defendant. Nevertheless the Lord Mayor did entertain the suit summoned the defendant and upon her making default in appearing before him with full knowledge of the alleged cause of action awarded an attachment against her under which money due to her in her public capacity as Sovereign of Spain was liable to be seized.

There is in this case therefore the same palpable excess of jurisdiction as that pointed out in the case of the Queen of Portugal.

We have only to consider whether there is before us a proper party to pray for a prohibition. The Queen of Spain does not make the complaint and it is only made by the garnishee after pleading *nil habet*.

The plaintiff's counsel argue that the garnishee could only plead *nil habet*; that of the Queen of Spain has any privilege against being sued in the Courts of this country, she only can take advantage of it; that she ought to have appeared and pleaded to the jurisdiction; that by her non-appearance she must be considered as having waived her privilege; that there has been no excess of jurisdiction at any rate as far as the garnishee is concerned; that it must be presumed that the Lord Mayor's Court will do its duty; and that if it decide improperly the remedy is a writ of error by which the record may finally be brought into this Court. But we are clearly of

opinion that in a case of this sort if the garnishee comes in time, he may be heard in this Court and a prohibition may be granted at his instance. Here there neither was nor could be any personal summons; the defendant could not be required to appear without a breach of the Law of Nations; the plea to the jurisdiction could only have been pleaded by her in her proper person. The garnishee has an interest in setting aside an attachment improperly executed if he has funds of the defendant in his hands; for although he would be discharged, according to the law of this country, by payment under the judgment of the Lord Mayor's Court, the Law of Spain may not recognise such a payment. He is prevented from applying the funds in payment of a debt which may afterwards become due to himself from the Spanish Government; and at all events, he is, "a stranger," on whose information and complaint of the excess of jurisdiction in contempt of the Crown as we should be bound to correct it by a prohibition. If the record fully discloses the error into which the inferior Court has fallen after there has been an excess of jurisdiction a prohibition and not a writ of error is the appropriate remedy.

Has the garnishee then by pleading *nil habet* disqualified himself from coming before us to pray for the prohibition? We think not, he was bound to put in a plea that he might avoid judgment and before the trial of this suit upon that plea and within a reasonable time pleading it he applies for a prohibition to prevent further proceedings in an action which ought never to have been commenced. *Hoc statu*, a stranger might successfully apply for a prohibition and surely so may the garnishee.

To shew that a prohibition could not be applied for till the objection relied upon was specifically made in the inferior Court and overruled, the plaintiff's counsel mainly relied upon the two cases of Home *v.* Earl Camden (2 H. Bl. 533) and Chesterton *v.* Farler (7 Ad. and El. 713). In the former case it was held by the House of Lords in conformity with the advice of all the judges that whether the misinterpretation by an inferior Court of a statute the consideration of which is confessed

to be within its jurisdiction be a ground for a prohibition or be not rather a matter of appeal in such a case a prohibition will not lie, unless it be made to appear to the superior Court that the party applying for the prohibition has in the inferior Court alleged the grounds for contrary interpretation of the statute on which he applies for the prohibition and that the inferior Court has proceeded notwithstanding such allegation. But the opinion of the judges delivered by Eyre, C.J., on which the House acted was founded entirely upon the reason that the inferior Court (the Commissioners of Prizes) had committed no excess of jurisdiction and therefore that a misconstruction of the act of Parliament was rather the subject of an appeal than of a prohibition. He says, "The complaint made to the temporal Court is not that the sentence is wrong which indeed the temporal Court had no jurisdiction to correct if it were wrong nor is the complaint that the sentence was an excess of jurisdiction or in any other respect a ground for prohibiting the Prize Court to carry it into execution." In Chesterton *v.* Falar a party who had appealed from the Arches Court to the Queen in Council, the appeal being referred by her to the Judicial Committee while the appeal was pending and before any proceeding had been taken in that Court moved the Court of Queen's Bench for a prohibition on the ground that a church-rate on which the suit had been commenced in the Consistory Court was bad as appeared by the pleadings there. The Court of Queen's Bench (I think very properly) held that a prohibition could not be granted in this ground the cause before a Court the jurisdiction of which was not denied, no erroneous proceeding having been taken there and this Court refusing to presume that the Judicial Committee would act incorrectly. Lord Danman having pointed out that the Court before which the cause then was had jurisdiction over it and had not fallen into, any mistake, adds, "If in the progress of the cause the Court should commit any error if they do anything against common law or acts of Parliament we may then interfere." But in the case at bar the inferior Court had no jurisdiction to entertain the cause and before the

strike out his name or to stay the proceedings on the ground of his privilege.

Quære, whether the privilege of an ambassador or foreign minister extends to prevent his being sued in the Courts of this country or only to protect him from process which may affect the sanctity of his person, or his comfort and dignity.

PROBATE DIVISION, 1879-80.

"*The Parlement Belge.*"

Public Vessel—Exemption from Arrest—Trading by Public Vessel.

As a consequence of the absolute independence of every Sovereign authority and of the international comity which induces every Sovereign State to respect the independence of every other Sovereign State, each state declines to exercise by means of any of its Courts any of its territorial jurisdiction over the person of any sovereign or ambassador or over the public property of any state which is destined to its public use or over the property of any ambassador though such sovereign, ambassador or property be within its territory:—

Held therefore reversing the decision of the Admiralty Division that an unarmed packet belonging to the sovereign of a Foreign State and in the hands of officers commissioned by him and employed in carrying mails is not liable to be seized in a suit *in rem* to recover redress for a collision and this immunity is not lost by reason of the packets also carrying merchandize and passengers for hire.

The judgment of the Court (James, Baggallay and Brett, L. JJ.) was delivered by Brett, L. J.

Three main questions were argued before us: (1) Whether irrespective of the express exemption contained in Article 6 of the Convention the Court had jurisdiction to seize the Belgian vessel in a suit *in rem*; (2) whether if the Court would otherwise have such jurisdiction it was ousted by Article 6 of the Convention; (3) whether any exemption from the jurisdiction

of the Court which the vessel might otherwise have had was lost by reason of her trading in the carriage of goods and persons. In the course of the argument we desired that it might in the first instance be confined to the first and third questions reserving any further argument on the second question to be heard subsequently, if necessary. We therefore give no opinion upon the second question. We neither affirm nor deny the propriety of the judgment of the learned judge of the Admiralty Division on that question.

The first question really arises is this whether every part of the public property of every Sovereign authority in use for national purposes is not as much exempt from the jurisdiction of every Court as is the person of every Sovereign. Whether it is so or not depends upon whether all nations have agreed that it shall be or in other words whether it is so by Law of Nations. The exemption of the person of every Sovereign from adverse suit is admitted to be a part of the Law of Nations. An equal exemption from interference by a process of any Court of some property of every Sovereign is admitted to be a part of the law of the nations. The universal agreement which has made these propositions part of the Law of Nations has been an implied agreement. Whether the Law of Nations exempts all the public property of a State which is destined to the use of the State depends on whether the principle on which the agreement has been implied is as applicable to all that other public property of a Sovereign or State as to the public property which is admitted to be exempt. If the principle be equally applicable to all public property used as such then the agreement to exempt ought to be implied with regard to all such public property. If the principle only applied to the property which is admitted to be exempt then we have no right to extend the exemption.

The first question therefore is:—What is the principle on which the exemption of the person of Sovereigns and of certain public properties has been recognised? "Our King" says, Blackstone (B. 1, c. 7), "owes no kind of subjection to any other potentate on earth. Hence it is that no suit or action

can be brought against the King even in civil matters because no Court can have jurisdiction over him. For all jurisdiction implies superiority of power; authority to try would be vain and idle without an authority to redress and the sentence of a Court would be contemptible unless the Court had power to command the execution of it, but who shall command the King"? In this passage which has been often cited and relied on, the reason of the exemption is the character of the Sovereign authority, its high dignity whereby it is not subject to any superior authority of any kind. "The world" says, Wheaton adopting the words of the judgment in the case of The Exchange, (1) "being composed of distinct Sovereignties possessing equal rights and equal independence all Sovereigns have consented to a relaxation in practice under certain peculiar circumstances of that absolute and complete jurisdiction within their respective territories which sovereignty confers." This perfect equality and absolute independence of Sovereigns has given rise to a class of cases in which every Sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction which has been stated to be attribute of every nation, "One of these is the exemption of the person of the Sovereign from arrest or detention within a foreign territory. Why have the whole world concurred in this? The answer cannot be mistaken. A Foreign Sovereign is not understood as intending to subject himself to a jurisdiction incompatible with his dignity and the authority of his nation". By dignity is obviously here meant his independence of any superior authority.

The case of The Duke of Brunswick *v.* The King of Hanover (1) the suit was against the King. There was a demurrer to the jurisdiction. Lord Langdale in an elaborate judgment allowed the demurrer. He rejected the alleged doctrine of a fictitious extraterritoriality; he admitted that there are some reasons which might justify the exemption of ambassadors which do not necessarily apply to a Sovereign but, he nevertheless adopted an analogy between the cases of the ambassadors

and the Sovereign and allowed the demurrer on the ground that the Sovereign character is superior to all jurisdiction. "After giving to the subject," he says, "the best consideration in my power it appears to me that all the reasons upon which the immunities of ambassador are founded do not apply to the case of Sovereigns but that there are reasons for the immunities of Sovereign Princes at least as strong if not much stronger than any which have been advanced for the immunities of ambassadors; that suits against Sovereign Princes of foreign countries must in all ordinary cases in which orders or declarations of right may be made and in request for justice which might be made without any suit at all; that even the failure of justice in some particular cases would be less prejudicial than attempts to obtain it by violating immunities though necessary to the independence of princes and nations, I think that on the whole it ought to be considered as a general rule in accordance with the Law of Nations that a Sovereign Prince resident in the dominions of another is exempt from the jurisdiction of the Courts there".

From all these authorities it seems to us although other reasons have sometimes been suggested that the real principle on which the exemption of every Sovereign from the jurisdiction of every Court has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority. By a similar examination of authorities we come to the conclusion although other grounds have sometimes been suggested that the immunity of an ambassador from the jurisdiction of the Courts of the country to which he is accredited is based upon his being the representative of the independent Sovereign or State which send him and which send him upon the faith of his being admitted to be clothed with the same independence of and superiority to all adverse jurisdiction as the Sovereign authority whom he represents would be.

The Prince Frederick seems to us to be worthy of great attention. An armed ship of war belonging to the King of the

Netherlands was arrested on a claim for salvage. The case was elaborately argued upon the question of jurisdiction. An argument of the closest and most forcible reasoning to which we see no answer was presented by Dr. Arnold, the Admiralty Advocate. "There is a class of things" he says, "which are not subject to ordinary rules applying to property which are not liable to the claims or demands for private persons which are described by civilians as extra commercium and in a general enumeration are by them denominated *sacra religiosa publica publicia usibus destinata.* These are things which are allowed to be and from their nature must be exempt and free from private rights and claims of individuals inasmuch as if these claims were to be allowed against them, the arrest, the judicial possession and judicial sale incident to which proceedings would divert them from those public uses to which they are destined. Ships of war belonging to the State are included in this class of things by their nature and of necessity arising from their nature. The same inconvenience which should arise from such proceedings in the Court of their own country would equally arise if such vessels could be arrested and destined in a foreign port. There is another point of view. It is the interest and duty of every Sovereign Independent State to maintain unimpeached its honour and dignity." The point and force of this argument is that the public property of every State being destined to public uses cannot with reason be submitted to the jurisdiction of the Courts of such State, because such jursidiction if exercised must divert the public property from its destined public uses; and that by international comity which acknowledges the equality of States if such immunity grounded on such reasons exist in each State with regard to its own public property the same immunity must be granted by each State to similar property of all other States. The dignity and independence of each State require this reciprocity. It was this reasoning which induced Sir William Scott to hesitate to exercise jurisdiction and so to act as to intimate his opinion that the reason could not be controverted. The case has always been considered as conveying

his opinion to have been to that effect. Such was the view of Lord Campbell who in De Haber *v.* The Queen of Portugal says, that the difficulties suggested by the argument were in the opinion of Sir William Scott insuperable. But if so he assented to an argument which embraced in one class "all public property" of the State and treated "armed ships of war" as a member of that class.

We come next to the important case of Briggs *v.* The Light-ships. The question was whether the Court had jurisdiction to take possession of the vessels in order to sue them is necessary and to give notice to the Government that if they had any objection to such sale they must appear? Every step in that case was the same as in the case of The Exchange and as in the present case. The objection to the jurisdiction as pleaded was in substance the same as that pleaded in the case of The Exchange and in the present case. The vessels, however, were not ships of war or vessels employed in the military service of the State. But the Court gave judgment declined the jurisdiction "It is said for the petitioners" (says the judgment at p. 165) "that these light-boats were not intended for military service. But after they had once come into the possession of the United States and could not be interfered with by State process. The immunity from such interference arises, but because they are instruments of war, but because they are instruments of Sovereignty. These reasons have satisfied us that there is no principle upon which the Courts of this Commonwealth can entertain jurisdiction of these petitions." The judgment ends thus: "The exemption of a public ship of war of a Foreign Government from the jurisdiction of our Courts depends rather upon its public than upon its military character." It puts all the public moveable property of a State which is in its possession for public purposes, in the same category of immunity from jurisdiction as the person of a Sovereign or of an ambassador or of ships of war and exempts it from the jurisdiction of all Courts for the same reason, *viz.*, that the exercise of such jurisdiction is inconsistent with the independence of the Sovereign authority of the State.

The judgment of Lord Campbell in De Haber *v.* The Queen of Portugal seems to the same effect though the decision may fairly be said to apply only to a suit directly brought against the Sovereign. But he relies on the Statute of Anne with regard to ambassadors and says, "Can we doubt that in the opinion of that great Judge (Lord Holt) the Sovereign himself would have been considered entitled to the same protection, immunity and privilege as the minister who represents him." The decision therefore is that the immunity of the Sovereign is at least as great as the immunity of an ambassador, but as the statute declares that the law is and always has been, not only that an ambassador is free from personal suit or process, but that his goods are free from such process as distress or seizure, the latter meaning seizure by process of law, it follows that the goods of every Sovereign are free from any seizure by process of law.

The latest case on the point seems to be the case of Vavasseur Krupp. And Cotton, L.J., says, "This Court has no jurisdiction and in my opinion none of the Courts in this country have any jurisdiction to interfere with the property of a Foreign Sovereign more especially with what we call the public property of the State of which he is Sovereign, as distinguished from that which may be his own private property. The Courts have no jurisdiction to do so not only because there is no jurisdiction as against the foreign country whose property they are, although that foreign country is represented as all foreign countries having a Sovereign are represented by the individual who is the Sovereign".

The principle to be deduced from all these cases is that as a consequence of the absolute independence of every Sovereign authority and of the international comity which induces every Sovereign State to respect the independence and dignity of every other Sovereign State each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person or any Sovereign or ambassador of any other State which is destined to public use, or over the property of any ambassador though such Sovereign, ambassador, or

property be within its territory and therefore, but for the common agreement subject to its jurisdiction.

Having fully considered the case of the Charick we are of opinion that the proposition deduced from the earlier cases in an earlier part of this judgment is the correct exposition of the Law of Nations, *viz.*, that as a consequence of the absolute independence of every Sovereign authority and of the international comity which induces every Sovereign State to respect the independence of every other Sovereign State each and every one declines to exercise by means of any of its territorial jurisdiction over the person of any Sovereign or ambassador of any other State or over the public property of any State which is destined to its public use, or over the property of any ambassador though such Sovereign, ambassador or property be within its territory, and therefore, but for the common agreement subject to its jurisdiction.

"*Law Reports, Chancery Division*," 1878.

VAVASSEUR *v.* KRUPP.

Foreign Sovereign—Jurisdiction—Submission—Injunction—Property—Patent.

The Court has no jurisdiction to prevent a Foreign Sovereign from removing his property in this country.

The Foreign Sovereign who for the purpose of obtaining his property, submits to be made a defendant in an action does not thereby lose his rights.

There is a right of property in an article made in infringement of a patent although the Court would under the article to be destroyed.

A Foreign Sovereign bought in Germany shells made there, but said to be infringements of an English patent. They were brought to this country in order to be put on board a ship of war belonging to the Foreign Sovereign, and the patentee obtained an injunction against the agents of the Foreign Sovereign and the persons in whose custody the

shells were, restraining them from removing the shells. The Foreign Sovereign then applied to be and was made a defendant to the suit. An order was then made by the Master of the Rolls, and affirmed on appeal, that notwithstanding the injunction he should be at liberty to remove the shells.

JAMES, *L.J.*—

I am of opinion that attempt on the part of the plaintiff to interfere with the right of a Foreign Sovereign to remove his public property is one of the boldest I have ever heard of as made in any Court of this country.

COTTON, *L.J.*—

The point, therefore, which has been a great deal argued does not arise, whether the defendants can justify an act which would otherwise be an infringement of the plaintiff's patent rights, on the ground that they were acting as agents for a Foreign Sovereign. That question does not arise but undoubtedly if parties in England are doing that which is an infringement of a patent they cannot justify it by saying that some one who has no power to authorize them to use the patent has authorized them to do so. Certainly my judgment in this case in no way depends upon any such proposition. After that injunction had been granted and assuming that the injunction was properly granted against the Defendants in the suit, the Mikado came in and said, "These shells are public property of the country of which I am Sovereign, and therefore I ought not to be prevented by that injunction from taking these shells. The injunction is not against me, but there may be a question whether the defendant could allow me to take these goods away without committing a breach of injunction, therefore I come in and state that the shells are public property of the country of which I am Sovereign and I ask the Court to give them over to me." In that proposition he is, I apprehended clearly right. This Court has no jurisdiction and, in my opinion, none of the Courts in this country have any jurisdiction to interfere with

the property of a Foreign Sovereign more especially with what we call the public property of the State of which he is Sovereign as distinguished from that which may be his own private property. The Court have no jurisdiction to do so, not only because there is no jurisdiction as against the individual but because there is no jurisdiction as against the foreign country whose property they are, although that foreign country is represented as all foreign countries having a Sovereign are represented by the individual who is the Sovereign.

"*Queen's Bench Division*," 1894 (1).

MUSURUS BEY v. GABDEN AND OTHERS.

Limitations, Status of—Personal Action—International Law—Ambassador—Immunities and Privileges of—Debtor—Absence beyond seas—Service of writ out of the jurisdiction 21—Jac. 1 C. 16-4 & 5 Anne, C. 16, S. 19—7 Anne, C. 12, S. 3—Rules of the Supreme Court, 1883, Order XI.

Whilst the ambassador of a Foreign State is in this country and accredited to the Sovereign, the State of Limitations (21 Jac. 1, C. 16) does not begin to run against his creditors.

The immunity of the ambassador of a Foreign State from process in the Courts of this country extends for such a reasonable period after he has presented his letters of recall as is necessary to enable him to wind up his official business and prepare for his return to his own country and he is not deprived of the immunity by reason that his successor is appointed before that period has elapsed. The Statute of Limitations does not begin to run against the creditors during such period.

By 4 & 5 Anne, C. 16, S. 19, where in certain specified actions a defendant is beyond the seas when the cause arise the plaintiff shall be at liberty to bring his action after the defendant's return so that he brings it, after the defendant's return within the time limited by 21 Jac. 1, C. 16.

Order XI of the Rules of the Supreme Court enables plaintiffs by leave, in certain cases to serve a writ or notice of a

writ where the defendant is neither a British subject nor the British dominions out of the jurisdiction :—

Held that Order XI has not the effect of annulling the right of a plaintiff under 4 & 5 Anne, C. 16, to bring his action after the defendant's return from beyond the seas within the time limited by 21 Jac. 1, C. 16.

Wright, J., delivered the judgment of the Court (Lawrance and Wright, JJ.). My brother Lawrance desires me to state the conclusion of which we have arrived. As to the contention of the plaintiff's counsel that there could not be two persons at once entitled to the privilege of an ambassador, it appears to me not to be consistent with good sense, as applied to the facts of the present case, and to be inconsistent with Marshall *v.* Critico. In that case the person who claimed the privilege had some months previous to his arrest been dismissed by his Government from his appointment in this country, and his successor appointed. It was much a stronger case than this yet no one suggested that the mere fact of there being two persons at the same time who claimed the privilege was an objection. Lord Ellenborough in refusing to allow the privilege did it simply on the ground that the State by whom the ambassador was accredited had dismissed him from his office and therefore that he was disentitled to claim the privilege of an ambassador—namely, that he is exempted from being sued in the Courts of the country to which he is accredited—has not been seriously contested. It was said that there is no English authority for the proposition that the privilege continues until the return of the ambassador to his own country, or at any rate so long as he is reasonably and properly occupied in winding up the affairs of his embassy and preparing to return there. We think that there is sufficient authority in the text books which were cited to show that the privilege may continue in the manner which the defendant's counsel contended for; and even if there were no authority to that effect we should come to the same conclusion on principle. In Taylor *v.* Best however the proposition was suggested in argument and supported by the authority of an

American case, Dupont *v.* Bichon where he is held by the Supreme Court of Pennsylvania that a *charge d' affaires* to entitle to privilege from arrest until his return to his own country although he has been for some months superseded by a minister plenipotentiary the delay of the *charge d'affaires* in returning to his own country being occasioned by official business. It is to be observed that in Taylor *v.* Best the Court did not dissent from that proposition when it was suggested to them. Further we do not think there is anything in the facts stated in the special case to rebut the presumption that the privilege continued until the return of Musurus Pacha to his own country. With regard to the important question raised as to the State of Limitation it seems really to depend upon what is the proper view to take of three cases; Douglas *v.* Forrest, Taylor *v.* Best, and Magdalena Steam Navigation Co. *v.* Martin. To some extent the point raised to-day is new. It is this: Admitted that Musures whilst he retained his privilege could not have been sued to judgment or execution, still it is said that a writ could have been issued against him for the purpose of avoiding the application of the Statute of Limitations, and therefore that the statute began to run whilst he was in England. We think on the whole that we ought to follow the indication of opinion of Lord Campbell in Magdalena Steam Navigation Co. *v.* Martin to the effect that the statute 7 Anne, C. 12, prohibits and makes null and void the issue of any writ or process against an ambassador and not merely writs or processes in the nature of writs of execution. We think also that the view taken by Best, C.J., in Douglas *v.* Forrest is applicable. He says: "Cause of action is the right to prosecute an action with effect; no one has a complete cause of action until there is somebody that he can sue"; and it seems to us that so long as the debtor is in the position that nothing can be done against his person or his goods a writ cannot be issued against him in such a sense that he could be sued with effect. For these reasons we are of opinion that the Statute of Limitations did not begin to run during the time Musurus Pacha was in England.

Another point to my mind or still more importance was made tor the plaintiff. Musurus Pacha after his return to Turkey in February 1886 was beyond the seas until the date of the defendant's counter-claim and therefore *prima facie* the statute would not during that time begin to run against the defendants. It was argued however that by reason of the jurisdiction given or given effect to by Order XI of the Rules of the Supreme Court it would have been possibly at any time since 1883 when Order XI came into force to issue a writ for service out of the jurisdiction and obtain leave to serve it or a copy of it upon the ambassador out of the jurisdiction. It was said that if this had been done Musurus Pacha would have been bound at any rate in regard to any assets he had in this country by a judgment obtained against him, and that the Statute of Limitations could have been saved. We were invited to hold that Order XI ought to be construed as to nullify the effect of 4 & 5 Anne, C. 16, S. 19, which in favour of plaintiffs suspends the running of the Statute of Limitations whilst the defendant is beyond the seas. We have come to the conclusion that we ought not to hold that Order XI was intended to nullify that long established right of plaintiffs. We do not consider it necessary or proper in this case to attempt to settle what is the precise effect of giving leave to serve notice of a writ upon a foreigner out of the jurisdiction. That question in its relation to the statute of Anne may be a very difficult one to determine. In the absence of any authority on the point we are of opinion that we ought not in this Court to hold that Order XI has the effect contended for of altering the rights of plaintiffs under the statute of Anne but that we ought to leave it to the Court of appeal to hold, if necessary, that so important a change has been effected by the giving under Order XI, of what is apparently intended to be an auxiliary rather than an original jurisdiction.

We are, therefore, of opinion that the Statute of Limitation has run out as against the defendants in respect of their counter-claim and that upon the question now before us for our determination there must be judgment for the defendants.

Judgment for the defendants on the question of Statute of Limitations; case left part-heard on other questions.

Solicitors for Defenfants: Austin & Austin.

„ „ Plaintiff: Busk & Mellor.

"Law Reports, Probate Division."

THE JASSY.

Admiralty—Jurisdiction—Action of Damage—Foreign Public Vessel—Appearance entered under Misapprehension—Exemption from Arrest.

Process by way of arrest in damage action *in rem* does not lie against a vessel the property of a Foreign Sovereign State and destined to its public use, and therefore, on the application of the foreign Government and the production of a certificate from the foreign office as to the public character of the vessel in question, all proceedings will be stayed and no waiver of the privilege assumed, although during the temporary presence of the vessel in this country, and under a misapprehension, in order to procure her release, agents of the Government to which the vessel belonged have given an undertaking to put in bail, and have entered an absolute appearance.

The Parlement Belge (1880) 5 P. D. 197, followed.

Motion to dismiss an action of damage by collision on the ground that the vessel proceeded against was the property of a Foreign Sovereign State and destined to its public use.

ASPINALL, K.C.—

The case is covered by the Parlement Belge where the vessel was very much of the same class and the Court of Appeal held that there was no jurisdiction to arrest her; see also the principle as to the immunity from arrest in the case of foreign ships, the public property of foreign State and destined to the public use, explained in the Constitution (1) In the case of Young *v. SS.* Scotia (2) the privilege from arrest was held to extend to a ferry-boat, as being the property of the

Crown, although used for trading purposes as part of the plant of a railway company.

SIR GORELL BERNES, President—

It appears that the vessel in question in this case is the property of the State of Roumania, and from a letter forwarded by the representative in this country of the Roumanian Government to the British Minister for Foreign Affairs it seems that she is employed for the public purposes of the State in connection with the national railways in Roumania. The statements contained in that letter are satisfactorily verified by a communication from the Foreign Office to the Registrar and in that way the facts have been brought to the notice of the Court. The result is that the principle laid down in The Parlement Belge applies, in spite of the undertaking to put in bail and appearance entered by some agent in Liverpool without the knowledge of the Roumanian Government and under a misapprehension as to the privilege enjoyed by a Sovereign State in respect of the immunity of its public vessels from arrest. The action will be dismissed with costs.

"*The Law Reports, Chancery Division,*" 1914 (1).

In re REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, LIMITED.

(00158 of 1912.)

International Law—Diplomatic Agent—Privilege—Waiver—Diplomatic Privileges Act, 1708 (7 Anne, c. 12).

Company — Auditors — Duties — Legal Knowledge — Balance Sheet—*Ultra vires* Payments.

Both under the common law and under the Diplomatic Privileges Act, 1708, a diplomatic agent accredited to the Crown by a Foreign State is absolutely privileged from being sued in the English Courts and any writ issued against him is absolutely null and void.

This diplomatic privilege can be waived if at all only with

full nowledge of the parties right and (semble) with the sanction of his Sovereign or (if he is of inferior rank to a minister plenipotentiary) his official superior.

Except in cases like Taylor *v.* Best (1854) 14 C. B. 487 when the agent is merely joined as a formal defendant it is doubtful if any such waiver is possible.

Barbuit's Case (1737) Cas. t. Tal. 281 ; Triquet *v.* Bath (1764) 3 Burr. 1478 ; Hopkins *v.* De Robeck (1789) 3 T. R. 79 ; Fisher *v.* Begrez (1833) 2 C. R. & M. 240 ; Taylor *v.* Best, 14 C. B. 487 ; Magdalena Steam Navigation Co. *v.* Martin (1859) 2 E. & E. 94; Musurus Bey *v.* Gadben (1894) 1 Q. B. 533 ; 2 Q. B. 352 ; Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149 ; and the Jassy (1906) p. 270, discussed and explained.

"*Law Reports, Chancery Division*," 1918 (1).

In re SUAREZ.

SUAREZ *v.* SUAREZ.

(1914, s. 178.)

International Law—Ambassador—Privilege—Waiver—Administration—Action Submission to Jurisdiction—Order for Payment into Court—Service—Writ of Sequestration—Leave to issue—Removal from Diplomatic List—Evidence—Rules of Supreme Court, 1883, Order XLII, rr. 4, 24—Diplomatic Privileges Act, 1708 (7 Anne, c. 12)—s. 3.

A minister of a Foreign State in England was sued for an account as administrator to an intestate's estate and in such proceedings waived his diplomatic privilege, instructed solicitor to accept service of the originating summons therein and obtained an order for an account against the plaintiff in the action. Subsequently after ceasing to be such Minister he set up the Diplomatic Privileges Act, 1708, as a defence to an application against him for sequestration for non-compliance with an order for payment into Court for trust moneys :—

Held by Swinfen Eady and Warrington, L.JJ., that an ambassador or public minister can with the consent of his Govern-

ment effectually waive his privilege and that the minister's immunity has ceased.

Taylor *v.* Best (1854) 14 C. B. 487, followed.

Dictum by Scrutton, L.J., doubting the authority of Taylor *v.* Best that the minister was estopped by his conduct from alleging the invalidity of the proceedings in the action.

A letter from the foreign office under the hand of an Assistant Secretary of State stating that a foreign minister's name has been removed from the Diplomatic List is sufficient evidence that the minister has ceased to hold diplomatic office at the date of the letter.

Under Order XLII, rr. 4 & 24, the Court has power to direct a sequestration to issue for non-compliance with an order for payment of money into Court notwithstanding that the order directing payment within a fixed time has not been served on the defendant pursuant to Order XLIII, r. 6, if the Court is satisfied that the defendant knew of the order and is evading service of it.

PART IV.

"*N. W. P. Sudder Dewanee Reports of* 1863," Part I.

The 20th June 1863.

JWALA PERSHAD, ETC. *v.* THE RANA OF DHOLPURE.

Held: by a Full Bench that an independent Native Chief, in accordance with the well-established principle of International Law, is not amenable to the Civil Court of the British Government.

This was a suit for the recovery of Rs. 10,695 the value of jewels said to have been purchased by the defendant from the plaintiff at Agra. The defendant pleaded that as an independent British Chief he was not subject to the jurisdiction of the Courts of the British Government, in support of which plea he relied on a letter of the Court of the Directors of the East India Company, dated 27th May 1835, which prohibited the cognizance of claims against independent chiefs, whether by the Courts or by the officers of the British Government. Principal Sudder Ameen admitted the validity of his plea and rejected the plaint.,

In appeal the plaintiff among other pleas which it is unnecessary to notice urged (1) that as the cause of action arose at Agra that is in British territory the suit is cognizable under Section 5, Act VIII of 1859, there being no exemption of Native Chiefs from the jurisdiction of British Courts under the laws in force, (2) that as the defendant by appearing had acknowledged the jurisdiction of the Court the Principal Sudder Ameen was not competent to reject the plaint.

This case having come before a Bench of two judges (Messrs. Ross & Pearson) was with reference to the first plea in appeal

referred for consideration to a Full Bench by an order to the following effect :—

As the question of amenability of the Rana of Dholpure to the jurisdiction of the Courts on account of debts contracted within British territory is one regarding which the provisions of law are not perfectly clear and previous decision affords no guide, we direct that this case be brought up with a view to be determination of the above question before a Full Bench if possible to-morrow.

FULL BENCH DECISION :—

The point referred for determination having been duly considered and discussed the judges are unanimously of opinion that the Rana of Dholpure being under treaty with the British Government an independent Native Chief is not subject to the jurisdiction of the Civil Court of the British Government on account of debts contracted in British territory. We observe that although the sections of the Civil Procedure Code relating to the jurisdiction of Civil Court contained no provisions specially exempting independent Native Chiefs from the jurisdiction of our Civil Courts it might be referred on general grounds that the Act in question was applicable only to those persons who are generally subject to the laws of British Government, and that therefore no special enactment would be deemed necessary for the exemption from the jurisdiction of our Courts of those persons who had generally not subject to the laws of the British Government. Hence it might be assumed that neither the independent Chiefs nor Princes nor their subjects residing out of British India are amenable to the jurisdiction of British Courts, but as it is contended that the subjects of foreign States in India have been held by former decisions to be under certain circumstances amenable to the jurisdiction of Civil Courts we prefer to restrict our decision to the case of Native Independent Chiefs. On this point we entertain no doubt ; for not only would the assertion of their amenability to British Law and British Courts be inconsistent with the admitted fact of political

independence, but it would involve the absurdity of our Courts issuing processes and decrees which were incapable of execution.

The soundness of the conclusion thus drawn from the above general considerations is borne out by the Rules of International and Public Law as laid down by well-known authorities on that branch of law. From the writings of such authors we may quote the following passages :—In Wheaton's International Law, Vol. I, Part 2, Ch. 2nd, p. 150, it is laid down that foreign Sovereigns representing the power, dignity and the Sovereign attributes of his own nation and going into the territory of another State under the permission which in time of peace is implied from the absence of any prohibition is not amenable to the civil or criminal jurisdiction of the country where he temporarily resides. The same principle of law if affirmed in Bewyer's Universal Public Law at page 174 where it is stated that Sovereign Princes are everywhere ex-territorial or exempt from jurisdiction. Lastly in Lindley's Study of Jurisprudence at page 18 of the notes in the note to section 27 it is laid down :— Foreigners whilst in this country are clearly bound by our laws but a Foreign Sovereign although residing here is not amenable to our laws unless he be a subject to the English Crown and unless the rights sought to be enforced against him have arisen from a transaction engaged in by him as such subject. The above passages are sufficient to show that in accordance with well-established principles of International Law the defendant as an independent Chief is not amenable to the jurisdiction of the Civil Court of British Government even in respect of transactions arising in British territory. Consistent with this principle of law are the instructions which were addressed by the late Court of Directors to the Government of India in their letter already referred to on which defendant has based his plea of exemption.

On the above grounds we are unanimously of opinion that the defendant the Rana of Dholpure in respect of all claims brought by the plaintiff is not amenable to the jurisdiction of Civil Courts.

"*Bombay Gazette*," 25*th February* 1864.

BEFORE J. F. HORE, ESQ.

A QUESTION OF JURISDICTION.

Balkrishna Purshotum *v.* Puttungsha Futtehsing, Raja of Jowar and Vabee Woman.

His Honour delivered the following judgment in the above cause this day (Wednesday) :—

He said the principal questions to be decided in this case are first whether the defendant, the Raja of Jowar, is an independent Sovereign Prince; and secondly, if so, whether he is amenable to the jurisdiction of the Court. It appears that the petty State of Jowar was founded in much the same way as the Mahratta Empire itself was established, namely, by means in the first instance of successful predatory acts. The territory is mountainous tract situated below the Shagdaree range, north-east of Thanna, and its population is composed principally of people of the Kolee caste. Jayab Mooknee, the founder of the State, commenced his career, more than five hundred years ago, by gradually collecting, in the strong country about Jowar, a band of armed followers who with himself were subsisted by the contributions which they levied on the villages and from travellers and by occasional freebooting. He was succeeded by his son Nemshah upon whom the Emperor of Delhi (finding him so firmly established in the country over which he had assumed authority) deemed it expedient by imperial Firman, to confer the title of Raja. The territory was gradually but greatly extended by its successive chiefs whose successive career of conquest was continued until checked and arrested by the forces of the Mahratta Government. Subsequently to the year 1860 the Peshwa assumed the right of interference in the constantly recurring feuds in the reigning family, and in the intestine discords of the State. Putting Shah, the grandfather of the present Raja, was adopted by the widow of his predecessor and established on the gadee by the help of the Peishva by whose

encroachments the State was reduced to its present limits, yielding a yearly revenue of about Rs. 20,000 per annum, but burdened with a fixed tribute of Rs. 1,000 per annum and a nuzzur on the investiture of each succeeding Raja. Putting Shah died in 1792 leaving three sons, of whom the eldest was Vikrumshah, the father of the defendant. Within the last 20 years the revenues have been still further reduced ; no tribute is any longer levied by our Government; and on the succession of the defendant owing to his poverty, the nuzzur was remitted although the future right to it was reserved. "The Chief is independent in his own State and the interference of the British Government is exercised only when called for by disputes in the reigning family or internal disturbance." This short description of the State is abridged from the Bombay Government Records No. 25. New Series, pages 14 . . . 21, and the facts disclosed by it appear to me to prove that the defendant is entitled according to the Law of Nations, to be regarded and ranked as an independent Sovereign Prince. It was however contended for the plaintiff and deposed to by the witness, Mr. Ryan, that the obligation to present a nuzzur on the occasion of the investiture of every succeeding Raja, was conclusive evidence to shew that the defendant was feudatory of the British Government and not an independent Sovereign. The answer to this argument seems to be twofold, first, that a nuzzur, in the common acceptation of the term, is a gift and not necessarily *a debitum* a present made, not only by feudatories to superiors of whom they hold their States, but by inferiors to superiors to whom no allegiance expressed or implied, is necessarily or legally due and secondly assuming the defendant to be a feudatory of the British Government; it by no means follows that he is not entitled to the rank and privileges of an independent Sovereign. An independent Sovereign Prince is one in whom the supreme executive power of a State governed by its own laws and by its own independent authority is vested. A State may be more or less limited in its Sovereignty, it may suit itself with another more powerful than itself by an unequal alliance, it may yield occasional obe-

dience to the commands of others, or allow its councils to be inhabitually influenced by other States; yet unless by express agreement or treaty it divests itself entirely of the right of self-government or Sovereignty, it still retains its rank among nations as an independent Sovereign State; and however weak, poor or insignificant is in the eye of the law entitled to equal international privileges with the most powerful and most wealthy of nations. This appears to be fully borne out by the unanimous opinion of writers on International Law. Vattel at page 2 says, "every nation that governs itself under what form soever, without independence on any Sovereign power is a Sovereign State. Its rights are naturally the same as those of any other state. Such are the moral persons who live together in a natural society, subject to the Law of Nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really Sovereign and independent, that is, that it governs itself by its own authority and law. We ought therefore to account as Sovereign States those which have united themselves to another more powerful by an unequal alliance in which as Aristotle says, 'to the more powerful it given more honour and to the weaker more assistance.' The conditions of those unequal alliances may be infinitely varied. But whatever they are provided the inferior ally reserve to itself the Sovereignty or the right of governing its own body it ought to be considered as an independent State, but keeps up an intercourse with others under the authority of the Law of Nations, consequently a weak state, which in order to provide for its safety places itself under the protection of a more powerful one, and engages in return to perform several offices equivalent to that protection, without however divesting itself of the right of government and Sovereignty that State, I say, does not, on this account, cease to rank among the Sovereigns who acknowledge no other law than that of nations. There occurs no greater difficulty with respect to tributary states; for although the payment of tribute to a foreign power does in some degree diminish the dignity of those States, from its being

a confession of their weakness yet it suffers their Sovereignty to subsist entire. The custom of paying tribute was formerly very common—the weaker, by that means, purchasing of their more powerful neighbour an exemption from oppression or that Prince securing his protection without ceasing to be Sovereign. The Germanic nations introduced another custom that of requiring homage from a State either vanquished or too weak to make resistance. Sometimes even a Prince has given sovereignties in fee and Sovereigns have voluntarily rendered themselves feudatories to others. When the homage leaves independency and Sovereign authority in the administration of the State and only means certain duties to the lord of the fee or even a more honorary acknowledgment it does not prevent the State or the feudatory Prince being strictly Sovereign." So Wheaton at page 29 says, "Sovereignty is the supreme power by which any State is governed. This supreme power may be exercised either internally or externally. Internal Sovereignty is that which is inherent in the people of any State or vested in its ruler by its municipal constitution or fundamental laws. External Sovereignty consists in the independence of one political society in respect to all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained in peace and in war with all other political societies. The law by which it is regulated has therefore been called external public law, *droit public extreme* but may more properly be termed international law. The recognition of any State by other States, and its admission into the general society of nations, may depend or may be made to depend at the will of those other States, upon its internal constitution or form of government or the choice it may make of its rulers. But whatever be its internal constitution or form of government or whoever may be its rulers or even if it be distracted with anarchy through a violent contest for the government between different parties among the people the State still subsists in contemplation of law until its Sovereignty is completely extinguished by the final dissolution

of the social tie or by some other cause which puts an end to the existence of the State. A government is acquired by a State either at the origin of the civil society of which it is composed or when it separates itself from the community of which it previously formed a part and on which it was dependent," and at page 45 " a Sovereign State is generally defined to be any nation or people whatever may be the form of its internal constitution which governs itself independently of foreign powers. This definition, unless taken with great qualifications, cannot be admitted as entirely accurate. Some States are completely Sovereign, acknowledging no superior but the supreme ruler and the governor of the universe. The Sovereignty of other States is limited and qualified in various degrees. All independent States are equal in the eye of international law whatever may be their relative power. The Sovereignty of a particular State is not impaired by its occasional obedience to the commands of other States or even the habitual influence exercised by them over its councils. It is only when this obedience or this influence assumes the form of express compact that the Sovereignty of the State inferior in power is legally affected by its connection with the other. Treaties of unequal alliance freely contracted between independent States do not impair their Sovereignty. Treaties of unequal alliance guarantee mediation and protection, may have the effect of limiting and qualifying the Sovereignty according to the stipulations of the treaties " and at page 51 " Tributary States and States having a feudal relation to each other are still considered as Sovereign, so far as their Sovereignty is not affected by this relation." And Phillmore is to the same effect at page 91, Vol. I, he says, " a State may place itself under the protection of another State with or without losing its international existence." ' The proper and strict test to apply will be the capacity of the protected State to negotiate to make peace or war with other States irrespective of the will of its protector. If it retain that capacity whatever may be the influence of the protector the protected State must be considered as an independent member of the European com-

munity.' No more inequality of alliance is destructive of the personality of a State among nations. The parties to such alliance are not the less Sovereign because they have consented of their own accord to disadvantageous terms in their treaties with other nations; it belongs as Grotius says, 'to unequal alliances'; and again at page 116, he says, "States that pay tribute or stand in a feudal relation towards other States are, nevertheless, sometimes considered as independent Sovereigns. It was not till 1818 that the King of Naples ceased to be a nominal vassal of the Papal See, but this feudal relation was never considered as affecting his position in the common wealth of States." As therefore the Jowar State was originally acquired by means of conquest and encroachment, in defiance of the power of the Emperor and by its mother country; as it has shewn its capacity to negotiate and to make war and peace with other States; as the State has been retained by its Chiefs during a period of 500 years and upwards without a relinquishment of their Sovereign rights and powers by any compact or treaty with either the Moghal, the Maratha or the British Empire and as it moreover appears from the records before referred to (Records printed and published by the authority and direction of the Bombay Government, and I therefore presume reliable for the accuracy of their statements) that the present Raja is independent in his own State, I arrive at the conclusion that the present question before the Court must be decided in favour of the defendant. On the second question it was argued, first, that International Law formed no part of the common law of England in the year 1726 when that law was introduced into India, and it could not therefore have been introduced into this country as law. Secondly, that if International Law did in any way prevail in India it had never yet been decided that an independent Sovereign residing in a foreign territory could under no circumstances be sued in the Court of that country. Thirdly, that the legislative authority in India had from time to time enacted laws which contemplate the institution of suits by and against native

chiefs in India and provided modes in which the same should be conducted and defended and that such laws would be entirely nugatory if native chiefs when sued, could successfully plead exemption from the jurisdiction of the chief courts of the country. And fourthly that as it enacted by the 28 section of our Act (No. 9 of 1850) that "all persons" (with the exemption of those expressly exempted in other sections of the Act) who dwell within the local district of the Court, or who did so dwell when the cause of action arose shall be deemed subject to the jurisdiction of the Court and as the defendant was residing within the jurisdiction as well when the action was brought as when the cause of action arose and as he is not named or referred to in the Act as one of those expressly exempted, the Court is bound to assume jurisdiction over him, and to decide the case upon its merits without reference to his title or rank. As to the first of these arguments it may be true as represented by Mr. Chancellor Kent, to whom Mr. Nanabhai referred as an authority that the rules of International Law were "almost unknown in England prior to the time of Lords Hardwick and Mansfield," but it is certainly very far from true to assert that International Law formed no part of the common law of England in the year 1726 and that it could not consequently have been introduced into India with that law. It would be as unprofitable as I think it would be out of place for a judge of this Court to attempt to investigate the origin and source of International Law in England, for the purposes of this action to shew that it prevails in India as it does in other parts of the world. Being a law which natural reason has rendered necessary and a law of natural growth, it requires no legislative or other express or constructive introduction into this country. It is a law which is described by all writers of authority and by all who have spoken on the subject as the unwritten or common law of nature to consist in the application of the law of nature to nations to be founded on necessity and the nature of things and though not a fixed or positive law to be, by tacit assent binding on all mankind. Montes-quieu (Esprit des Lois) states

that "every nation has a law of nations—even the Iroguois who eat their prisoners have one." The Hon'ble Mounstuart Elphinstone also refers to its existence in India. In his report of the 11th February 1818, when animadverting on the perfidious conduct of Bajee Rao he complains that "he attacked and burned the house of the British Resident and contrary to the Laws of Nations and the practice of India, plundered and seized on peaceable travellers and put two British officers to an ignominious death." So Mr. Burke in his speech on the impeachment of Warren Hastings says, "now having contended as we still contend that the Law of Nations is the law of India as well as of Europe, because it is the law of reason and the law of nature drawn from the pure sources of morality of public good of natural equity and recognised and digested into order by the labour of learned men, I will refer your Lordship to Vattel b. 1. c. XVI, where he treats of such engagements. So Mr. Phillmore, Vol. I, pages 20, 22, 23, says, "International Law is not confined in its application to the intercourse of Christian nations still less as it has been affirmed of European nations, but that it subsists between Christian and heathen and even between two heathen nations though in a vaguer manner and less perfect condition than between two Christian communities so that whenever communities come into contact with each other before usage or custom has refined into a *quasi* contract and before positive compacts have sprung up between them their intercourse is subject to a law." "But if the precepts of natural law are obligatory upon heathen States in their intercourse with each other much more are they binding upon Christian Governments in their intercourse with heathen States."

"The great point however to be established is that the principles of international justice do govern or ought to govern the dealings of the Christian with the infidel community. They are binding, for instance, upon Great Britain in her intercourse with the native powers of India, upon France with those of Africa, upon Russia in her relations with Persia or America, upon the United States of North America in their intercourse

with the native Indians." Upon these authorities it is clear that International Law prevails in India.

"The question raised in the second argument with reference to the liability of a Sovereign residing in a foreign country to the jurisdiction of the Courts of that country was expressly decided in the case of the Duke of Brunswick *v.* King of Hanover, 6 Beav. I. In that case it was held by the Master of the Rolls, that a foreign Sovereign Prince was exempt from the jurisdiction of the Court in England, unless he also happened to be a subject of Her Britanic Majesty, that the defendant was exempt from such jurisdiction for any acts done by him as a King of Hanover or in his character of sovereign prince but that being also a subject of Her Majesty, he was liable to be sued in England in respect of any acts and transactions done by him or in which he might have been engaged as such subject and that in respect of any act done by him out of the realm or any act as to which it might be doubtful whether it ought to be attributed to the character of Sovereign Prince or to the character of subject, the same ought to be presumed to be attributable rather to the former than to the latter character. In the course of his very able and elaborate judgment it is said by the learned judge (p. 50) "after giving to the subject the best consideration in my power it appears to me that all the reasons upon which the immunities of ambassadors are founded, do not apply to the case of Sovereign Princes at least as strong if not stronger than any which have been advanced for the immunities of ambassadors that suits against Sovereign Princes of foreign countries must in ordinary cases in which orders or declarations of rights may be made, end in requests for justice which might be made without any suit at all; that even the failure of justice in some particular cases would be less prejudicial than attempts to obtain it by violating immunities though necessary to the independence of prince and nations, I think that on the whole it ought to be considered *as a general rule in accordance with the Law of Nations,* that a sovereign prince resident in the dominions of another

is exempt from the jurisdiction, civil or criminal, of the Courts here. It is true as was argued for the plaintiff that the common interest of mankind requires that justice should everywhere be done, and that for the attainment of justice all persons should be amenable to the Courts of Justice where they are. Such is the general rule, but in cases where either party has no superior by whom obedience can be compelled, where the execution of justice is not provided for by treaty, and cannot be enforced by authority of the judge; and where an attempt to enforce it by the authority of the State may probably become a cause of war, the same common interest, which is the foundation of the rule, requires some exceptions should be made to it, and that exception is general rule with respect to Sovereign Princes." It is true upon this case coming before the House of Lords on appeal (2 H. L. Ca. 1) the judges declined to express any decided opinion on that part of it, the Master of the Rolls is judgment upon which I have relied; considering that the broad question, how far a Sovereign Prince residing in a foreign country was answerable at all, did not necessarily arise before them; yet so far from questioning the correctness of the conclusion at which the Master of Rolls had arrived they rather seem to confirm the view which he took of the law on the subject. Lord Lyndhurst, for instance, in the course of his judgment, observes "it must be a very particular case indeed, even if any such case could exist, that would justify us interfering with a Foreign Sovereign in our Courts." For the dicta of the judges on the same subject I would refer to the opinion of Lord Abinger in Glyn *v.* Soares, 1 Y. and C. (Exch.) 698, wherein he says there remains one question behind, which was not mooted at the bar which I have thought required some consideration, and that is, whether a Sovereign Prince can be made amenable to any Court of Judicature in this country. As a general proposition he certainly cannot. We have no process to reach him, neither have we any jurisdiction, *civil or criminal*, over him directly." And also to that of Lord Campbell in De Haber *v.* Queen of Portugal, 17 Q. B. 212.

As to the third point argued it is sufficient to remark that all persons whether Foreign Sovereigns or others have an indisputable right to institute suits and actions as plaintiffs in our Courts, that cases may arise in which even independent Sovereigns may be made amenable to their jurisdiction as defendants. As for instance cases in which the defendant, although an independent Sovereign so far as regards the country over which he reigns, appears to be at the same time a subject of Great Britian (The Duke of Brunswick *v.* The King of Hanover); or cases in which the defendant has submitted to the jurisdiction by instituting a suit in his own name, and a cross bill, with reference to the same subject-matter is filed against him as defendant in the same Court (The King of Spain *v.* Hullett, 1 Cl. and Fin. 333), and that if enactments, such as those referred to by Mr. Nanabhai, have any real existence they must have been past for the purpose of regulating procedure in cases instituted or defended under circumstances such as I have just referred to, and certainly not for the purpose of rendering subject to the jurisdiction of the Courts persons who otherwise would be exempt therefrom, as International Law is equally binding upon all nations, it follows that no portion of it can be abrogated or altered by any single nation without the concurrence and assent of the rest; and therefore if the defendant as an independent Prince is, in accordance with the Law of Nations, exempt from the jurisdiction of foreign Courts, he cannot legally, and, *in invitum*, be rendered subject by the legislature of this country.

Then as to the Fourth and last argument upon this point much greater difficulty seems to present itself than on any other part of the case. By the 28 section of the Small Causes Court Act, the Legislature has thought fit to give us jurisdiction over "all persons who dwell or carry on their business or work for gain within the jurisdiction of the Court at the time of bringing the action, or who did so dwell or carry on their business or work therein at the time when the cause arose," except certain persons who are specified in other sections of the Act; and this defendant

was certainly dwelling within the jurisdiction as well when the cause of action arose as when the action was brought and does not happen to be one of those who are specially exempted by other parts of the Act. As the words thus employed by the Legislature are general, precise, and unambiguous, and, as a construction according to their literal and ordinary meaning leads to no absurdity or manifest injustice, it is clearly the duty of the Court to place a strict and literal construction upon them (Berry *v.* Skinner, 2 M. and W. 476). But it is said by Mr. Connon on behalf of the defendant that the Indian Legislature has exceeded its authority and powers in legislating for all persons who are not specially excepted by the Act and that the Court cannot exercise jurisdiction over those whom the Legislature had no power to subject to its jurisdiction and over whom it had no control. Although I concur in the first part of this proposition, I am unable to accede to the latter portion of it. If correct in what I have already decided with reference to the exemption from the jurisdiction of our Courts of indepenent foreign Princes and in what I have stated with reference to the abrogation or alteration of International Law by the legislature of a single State, it necessarily follows that, in employing the very comprehensive terms which occur in this 28 section the Indian Legislature has exceeded its power. For not only does the defendant come within the literal meaning of those terms, but the Emperor of the French, the Emperor of Russia, or any other powerful independent Sovereign might, by taking up a temporary abode in the island of Bombay, render himself subject to the jurisdiction of this Court, such could never have been in the contemplation of the Legislature when it passed our Act; yet, were it not for a fiction of law, to which I shall presently advert such would be the necessary result. Not only has the Indian Legislature, by using these broad terms, interfered with the province of International Law, in the way I have pointed out, but it has actually contravened one of the express provisions of the Imperial Act under which it was itself constituted and established. By the 43rd section of 3

and 4 W. 4th C. 85, it was expressly prohibited from making laws which might in Mutiny Act yet, by this section of our Act, it has made subject to the jurisdiction of the Court, persons who, under the Mutiny Act, were previously subject to the military course of request only, nevertheless, notwithstanding this excess of authority on the part of the Legislature, I am clearly of opinion that it is the duty of the Judges of this Court to carry out the enactment in question strictly as it stands and to give full effect to its wording according to its literal meaning. Were Courts of Law to act upon their own impression and conclusions with regard to the legality of legislating enactment, they would assume to themselves a power which they never possessed and usurp the province of the Legislature itself. To do this would be to set the judicial over the legislative power. It is the privilege and duty of the latter to frame and pass laws, and of the former to expound and enforce them. So long as an enactment subsists, unrevoked and unrepealed, it is equally binding upon the judges and the subjects of the land. The enactments of the Legislative Council of India appear to me to be at least as operative, binding, and irresistible and to be as little open to question by Courts of Law in this country, as charter passed by Her Majesty under legislative powers, are unimpeachable by Court of Law in England; and it was decided in the Attorney-General *v.* the Portreeve, Aldermen and Burgesses of Avon, 9 Jur. N. S. 1117, that the Court would not enquire into the validity of a charter granted by Her Majesty under the Legislature, but would act upon it as being valid and binding until proper proceedings were taken to set it aside. In that case the Master of the Rolls says, "It was contended that the charter was invalid on the ground that it had not been petitioned for by a majority of inhabitant house holders. But the Queen has thought fit to grant the charter, and the Court of Chancery is not the proper tribunal to determine its validity. The ordinary and proper mode of trying the validity of a charter is by a writ of *quo warranto*, but the Courts of Queen's Bench have determined (Reg. *v.* Taylor, 11 and Ell.

949) that it will not grant a writ of *quo warranto* where the object is to call in question the validity of a charter granted under this Act. Even the case of a deed, this Court will act upon it unless some proceedings are taken to set it aside. The same rule applies much more strongly in the case of a royal charter, unless some proceedings are taken to set it aside, which proceedings are not to be taken in this Court. I am of opinion, therefore, that I have no option but to treat this as a valid and subsisting charter granted under the 49th section and of the 7 Will. VI and 1 Vict., C. 78, being the Act to amend the Municipal Corporation Act." See also Dwarris on statutes 484 where it is laid down that " the general and received doctrine certainly is that an Act of Parliament of which the terms are explicit and the meaning plain, cannot be questioned or its authority controlled in Court of Justice." Having thus shewn that notwithstanding the excess of authority exercised by the Legislative Council, the Court is bound to conform to the strict provisions of its enactments, the question still remains to be disposed of whether the defendant is amenable to the jurisdiction of the Court as a person who dwelt within such jurisdiction when the cause of action arose, or at the time when the action was instituted. This question, it must be borne in mind, is simply a question of fact and not a question of law. But the question although a question of fact is already settled as I have before intimated, by a fiction of law which is this, *viz.*, that an independent foreign Prince, although corporeally and physically within the jurisdiction of the Court, is nevertheless, morally, and in the eye of the law not only domiciled but dwelling in his own country. On this subject, Phillimore (Vol. I, p. 364) says, " the second class of recognised exceptions which entitled foreigners, who are the subjects of them to be considered as morally without, though physically within, the territorial limits relate to Foreign Sovereigns passing through or temporarily residing in the territory of another State; they are held not to be amenable to the jurisdiction, civil or criminal, of its tribunals. They represent the nation

of which they are Sovereigns and being permitted to enter a Foreign State are entitled, by International Law, to be considered, both as to their own person and effects and as to those of their attendants, as being still within their own dominions." So Lord Campbell, C.J., in DeHaber *v.* Queen of Portugal, 17 Q. B. 282, in speaking of a judgment of outlawry against Sovereign prince, says, "such a proceeding is manifestly inapplicable to a Foreign Sovereign, who must be supposed to be in his own dominions, and, if he were in England, could not be so sued without a breach of the Law of Nations and of our Municipal Law," and again in Magdalena Steam Navigation Company *v.* Martin, 2 Ell. & Ell. III, Lord Campbell, when delivering judgment in an action brought against an ambassador who as *pro rege* and whilst acting in that capacity seems to be entitled to the same privileges as the Sovereign by whom he is deputed, says, "he does not owe even a temporary allegiance to the Sovereign to whom he is accredited and he is at least as entitled to great privileges from suits as the Sovereign whom he represents. He is not supposed even to live within the territory of the Sovereign to whom he is accredited and if he has done nothing to forfeit or to waive his privilege, he is for all judicial purposes supposed to be in his own country." Therefore as the law decides, that, in its contemplation, an independent Prince must always be deemed to be within his own dominions, it is incumbent on me to find as a fact, that the defendant did not dwell within the jurisdiction of this Court, either at the time when the cause of action arose, or at the time when the action was brought.

On the whole, therefore, I come to the conclusion that the defendant Raja Puttingshah Vikurmshah is not amenable to the jurisdiction of the Court; and consequently that his name must be struck out of the summons.

"*Bombay High Court Reports*," Vol. VII, 1870.

SUIT NO. 179 OF 1865.

La'dkuvarbai, widow .. .. *Plaintiff.*
Ghoel Shri Sarsangji Pratabsangji .. .. *Defendant.*

Independent Sovereign Prince—Privilege from Suit—International Law—Palitana, Thakur of—Kathiavad, Chief of—Misdescription of Defendant—Decree made by mistake—Execution, Stay of.

An independent Sovereign Prince is privileged from suit in the Courts of British India.

The Thakur of Palitana is an independent Sovereign Prince.

A suit was brought against the Thakur of Palitana (his title being omitted from the plaint), and an *ex parte* decree was obtained against him. An application on the part of the Thakur to have the decree set aside was dismissed, and the plaintiff then sued out an attachment, but, failing to execute it within a year, was compelled to apply to the Court, under Section 216 of the Code, for leave to execute it. The defendant at the same time applied to have the attachment and all proceedings under it declared null and set aside.

The Court (without expressing an opinion as to whether the order dismissing the application to have the decree set aside would have prevented it from declaring the decree void *ab-initio*). *Held* that, as the decree was made erroneously and without jurisdiction, it would not, when apprised of the error, assist the plaintiff in carrying it into execution in a case in which lapse of time made it incumbent on the plaintiff specially to invoke the aid of the Court for that purpose.

The plaintiff in this suit sued as widow and executrix of Ratanji Rupji Modi. She was described in the plaint as formerly residing in the house No. 18 in Balaji Shamset Street in Bombay, but as residing at the time the suit was brought at Gogo, in the Zilla Ahmedabad, and carrying on business in Bombay under the name of Ratanji Rupji Modi by means of her munim, Bhagvandas Visandas.

That the independence of the State of Palitana and of the Thakur or Raja thereof for the time being had never been denied or questioned by the British Crown, but had, on the contrary, always been by public records and other acts of State of the British Crown admitted and acknowledged and

especially by the treaties subsisting between the Crown and the State of the petitioner, whereby they were reciprocally entitled, the former to tribute and the latter to no protection. That the petitioner and his predecessors had always been, and were properly, described not only by their personal and proper names and the names of their family, but also by the prefixes and affixes employed amongst Hindus generally and Rajputs to denote the royal rank of Thakur or Raja and that the proper name and title of the petitioner was "Thakur Ghoel Sarsangji Pratabsangji."

That the petitioner had never consented to be sued in the present suit and had never in any way attorned to the jurisdiction of the Court. The petitioner then set out the proceedings had in the suit, and prayed for the relief mentioned in the rule *nisi*.

It was arranged between the parties that the hearing of the summons granted by Sir Charles Sargent on the 12th of February 1870, and of the cause to be shown against the rule *nisi* made upon the above petition, should come on together.

The hearing of the above matter first came on before Couch, C.J., and Westropp, J., in March 1870, but the hearing not having been then completed the case finally was argued before Westropp, C.J., and Melvill, J., on the 27th of June and the 4th of July 1870.

The Hon'ble A. R. Scoble (Acting Advocate-General), with him Macpherson, showed cause:—The order of Sir Joseph Arnould made in this matter is binding upon this Court which is not sitting as a court of appeal. The time for asking for a review of that order has long since elapsed and the delay was not in any way been accounted for. On the substantial question raised by the petition, we contend (1) that in respect of such a cause of action as the present a Sovereign Prince is liable to be sued in the courts of foreign country. (2) That the Thakur of Palitana is not an independent Sovereign Prince in such a sense as to exempt him from liability to be sued in Her Majesty's Courts.

Sovereign Princes have been brought before the Courts in England with varying results: See The Duke of Burnswick *v.* The King of Hanover (*a*); and we contend that when an act in respect of which a Sovereign is sued is not a political one and is unconnected with the government of the State of that Sovereign, and has not been done by him in his Sovereign capacity, but acting merely as a private individual in respect of such act that Sovereign is liable to be sued in the same way as a private individual, if in other respects he is within the jurisdiction of the Court in which he is sued. Thus H. H. the Holkar who used to carry on trade in Bombay has frequently sued and been sued in this Court. (Westropp, C.J., pointed out that H. H. the Holkar had never objected to the jurisdiction, but had in fact attorned to it.) On this point the following authorities were also referred to:—Taylor *v.* Best (*b*); Magdalena Steam Navigation Company *v.* Martin (*c*); *In re* Wadsworth *v.* Queen of Spain, and DeHaber *v.* Queen of Portugal (*d*); Munden *v.* Duke of Brunswick (*e*); Secretary of State for India *v.* Kamachu Boye Sahaba (*f*); King of Spain *v.* Hullet (*g*); The Emperor of Austria *v.* Day.(*h*).

We also contend that the Thakur of Palitana is not an independent Sovereign Prince. He is habitually obedient to the British Crown, represented by the Political Agent for the time being. He pays tribute to the Crown to which also he owes allegiance. He has by the Crown been deprived of the right to inflict capital punishment within his own nominal dominions. The following records and authorities were referred to in support of the above propositions:—Austin on Jurisprudence, Vol. I, Ch. VI, pp. 226, 227 (edn. of 1870); Aitchison's Treaties, pp. 361, 365, 366, 369; Thomas's Treaties, pp. 232, 234; Colonel LeGrand Jacob's Report of Captain Barr's Report, Bombay Selections, XXXVII, N. S., *passim*. The case of Jwala Pershad *v.* The Rana of Dholpur (*i*) is in a different position from this. See Aitchison's Treaties, Vol. IV, pp. 106, 108; Raja of Jipperah's Case, cited at p. 16 of Macpherson's Code. Public policy does not require the Chiefs of Kathiawad to be exempt from civil

jurisdiction; on the contrary their great numbers and the smallness of their States render it desirable that they should not be so exempt. 6 Aitchinson, 363. They cited also Seldon's Table Talk.

Anstey (with him McCulloch), in support of the rule:—The order of Sir Joseph Arnould is not a bar to the present application of the defendant. That order was one refusing to set aside an *ex parte* decree, on the ground that the application was too late. We now ask that the decree may be declared void *ab initio*, as having been made without jurisdiction. The nature of the two applications is wholly distinct. The Courts will always declare void a decree which has been obtained by fraud or misrepresentation, as in the present case: Duchess of Kingston's Case; Sheddon *v.* Patrick; or will not give effect to it; Philipson *v.* The Earl of Egremont; Bradley *v.* Eyre; Earl of Bandon *v.* Becher. If there is any provision in the Civil Procedure Code which would give effect to a decree against an independent Sovereign, it is void as being *ultra vires*. If an act is *ultra vires* the Courts will treat it as a nullity: Bonham's Case; City of London *v.* Wood; Earl of Lincoln *v.* Heyden; Forsyth's Opinions on Constitutional Law, p. 31.

He also cited Forbes *v.* Cochrane; The Fox; The Queen *v.* Serva; Heathfield *v.* Chitton.

A Sovereign Prince is absolutely exempted from suit in the Courts of foreign nations. This is shown by the cases cited for the plaintiff: Taylor *v.* Best; the Magdalena; The Duke of Brunswick *v.* The King of Hanover; Phillimore on International Law, Vol. II, pp. 118, 119.

And this doctrine has been recognised and acted upon in the Courts in India; Jwala Pershad *v.* H. H. the Rana of Dholpur; Balkrishna Purshotum *v.* The Raja of Juvan, a case decided in the Small Cause Court by the Chief Judge, Mr. Hore, reported in the *Bombay Gazette*, 25th February 1864; The Queen *v.* Vencanna.

The defendant has been acknowledged as an independent

Sovereign Prince by the British Government ; if he had not been so acknowledged it might be necessary to prove the fact by evidence : City of Berne *v.* The Bank of England ; Yrisarri *v.* Clement ; Taylor on Evidence, Pt. I, Ch. II, para. 4; Goodeve on Evidence, p. 309 ; Le Louis. The correct definition of a State (Civitas) is given by Mr. Phillimore in his work on International Law, Vol. I, p. 77. His definition coincides with that of "Vattel", lib. i., c.i, ss. 4 and 7 ; see too Grotius, Bk. I., Ch. III, s. 1. The definition of Mr. Austin is that of a philosopher, not that of a practical jurist. Besides, he subsequently qualifies his definition. The Thakur of Palitana is not a feudatory of the British Crown. If he owes homage it is only liege homage and he is not therefore a subject : I. Hael, Pleas of the Crown, pp. 68, 70, 74. He is one of a confederacy of Princes of which the Queen is the Chief. He pays tribute but is not the less independent on that account. The King of England prior to Edward III did homage to the Kings of France and paid tribute to the Pope : Rymer's Foedera, 9, 24, 33, 35 *et passim acta regia.* Her Majesty may afford him protection but allegiance and protection are not reciprocal ; Calvin's Case ; Grotius, lib. 1, c. 3, s. 7. The report of Col. Walker shows clearly the position of the defendant : Bombay Selections, Vol. XXXIX, also Col. Jacob's Report, Bombay Selections, XXXVII, Col. Barr's Report, *Ibid.* He also referred to Thomas's Treaties p. 232 ; Thornton's Gazetteer, tit. Talooka, and Wilson's Glossary. A Prince bearing the title of Thakur must not be denied his title : Phil. In. Law, Vol. II., pp. 118, 119 ; Act III of 1864 ; and 21 and 22 Vict., c. 106, were also referred to.

Cur. Adv. Vult.

WESTROPP, C.J. The first writ of summons in this suit was never served. A fresh writ of summons, tested 30th and sealed 31st October 1865, was issued, returnable on the 23rd of December 1865. The plaintiff made an attempt to cause it to be served through the Magistrate of Gogo, but it was returned

by him unserved as the defendant did not reside within his district. It eventually was served through the Post Office, under Section 60 of the Civil Procedure Code, upon the defendant at Palitana. The defendant, in his petition filed on the 7th of March 1870, states, too unfavourably to himself that this service was had upon him on the 6th of December 1865. It was, however, upon that day only despatched from the Prothonotary's Office by post, and did not reach the defendant until the 11th of December 1865, as appears by the letter of the Postmaster of Bombay, dated 20th December 1865, and appended to the affidavit of Jagjivan Manji, made on behalf of the plaintiff. From the 11th to the 23rd December 1865, the day on which the summons was returnable, was not a sufficient period to allow to a defendant residing in Kathiawad to appear and defend a suit brought against him in Bombay. The plaintiff, therefore, was blameable in deferring the service of summons issued in October until December 11th, twelve days before it expired. True, this was a long cause and being such could not in the usual course, in consequence of the arrear of long causes in our lists, have come on for hearing upon the day of return and Her Majesty's subjects are expected to know this.

The same affidavit also stated on information and belief that the plaintiff fraudulently described the defendant in the plaint as an inhabitant of Palitana instead of Raja of Thakur of Palitana with a view to his being made amenable to British Courts of Justice and that the writ of summons did not reach him sufficiently soon to admit of his appearance in the High Court on the day on which that writ was returnable; and that the account sued upon was not adjusted by a constituted attorney of the defendant, and that he had a good defence to the action; and alleged that the defendant, being a native independent Chief of the second grade in Kathiawad, is not amenable to British Courts of Justice.

We think that there are equally strong reasons for a Court's declining to carry into execution a decree or order which it had not any jurisdiction to make and that this is the more

especially so where the fact that would have shown to the Court its want of jurisdiction in the particular case has been throughout the previous proceedings suppressed by the plaintiff.

The defendant, if originally privileged from suit in this Court, has not in anywise waived that privilege by acquiescence in the jurisdiction of the Court. Every step which he has taken is in denial of that jurisdiction. He has therefore avoided the predicament in which the defendant in Taylor *v.* Best (1) placed himself by acts which were held to amount to such an attornment to the jurisdiction as precluded him from applying to the Court to stay proceedings, on which the ground of privilege as an ambassador or foreign minister.

Was then the present defendant originally privileged from suit here? If he be an independent Sovereign Prince it is, we think, clear that he was not privileged. Speaking of a Sovereign Prince, Lord Langdale, M.R., in the Duke of Brunswick *v.* The King of Hanover, said: "Remaining in his own dominions if any other Prince to whom he is not a subject he would, as I presume, be exempt from all forensic jurisdiction" (6 Beavan 56). Lord Langdale had previously said: "After giving to the subject the best consideration in my power, it appears to me that all the reasons upon which the immunities of ambassadors are founded do not apply to the case of Sovereigns, but that there are reasons for the immunities of Sovereign Princes at least as strong if not much stronger, than any which have been advanced for the immunities of ambassadors; that suits against Sovereign Princes of foreign countries must, in all ordinary cases, in which orders or declarations of right may be made end in requests for justice which might be made without any suit at all; that even failure of justice in some particular cases would be less prejudicial than attempts to obtain it by violating immunities though necessary to the independence of princes and nations, I think that on the whole it ought to be considered as a general rule in accordance with the Law of Nations that a Sovereign Prince resident in the dominions of another is exempt from the

jurisdiction of the Courts there" (*ibid* 50, 51). He then proceeded to show that a Sovereign Prince who was also a subject of the Crown of England, though exempt from all liability to be sued in the Courts of Justice in England for any acts done by him in his character of Sovereign Prince, would be liable to suit in those Courts in respect of acts and transactions in which he may have been engaged as such subject of the Crown of England; and that in respect of acts done out of the realm of England, or any act as to which it may be doubtful whether it ought to be attributed to the character of Sovereign or to the character of subject, it ought to be presumed to be attributable rather to the character of Sovereign than to the character of subject.

That case which was decided in 1844 has ever since been regarded as the leading authority on the subject of the immunity of Sovereign Prince from suit. The international doctrine there laid down is quite as applicable to the independent Sovereign of a petty State as to the Ruler of a great State, and has been as we think properly applied by the Sudder Dewani Adaulat, N. W. P., in a suit against an independent Native Chief which was dismissed for want of jurisdiction in the British Court: Jwala Pershad and another *v.* H. H. the Rana of Dholpur (*m*).

But it is said that there are various degrees of independence; that the defendant pays tribute to the British Government, owes allegiance to the British Crown, and therefore is liable to suit in the British Court of Justice.

The Taluka orState of Palitana is situated in Gohelwar, one of the ten Prants or districts into which the province of Kathiawad is divided. Col. LeGrand Jacob says: "The present name of Kathiawar for the peninsula has without due reason been suffered to usurp its correct appellation, Sourashtra by which it was known to the Greeks and is still so to almost every Native of Goozerath who can read and write." And again "It is strange that the Kattya who are greatly inferior to the

Rajputa communities in numbers, territory, wealth and rank should have the honour of conferring their name on the peninsula, and it is to be regretted that its more appropriate and classical name of Sourashtra should not have been reverted to by its new governors, instead of its present incorrect designation which has the further disadvantage of giving rise to mistakes whenever its subordinate province (Prant) of Kathiawar is alone referred to." Bombay Government Records, Printed Selections, N. S., No. XXXVII, page 6; and see Grant Duff's History of Mahrattas, page 260 (Bombay reprint, 1863) where it is further observed that "the whole region is inhabited by a warlike people, chiefly Jareja Rajpoots, who are under separate Chiefs." The inhabitants of the Prant Gohelwar have been always noted for their steady, and often successful, resistance of Maratha violence: Bombay Government Records, Printed Selections, No. XXXVII, N. S., pages 287, 288.

It is true that the British Government receives tribute from the Thakur of Palitana, not so however for itself, but for the Gaikwad of Baroda and the Nawab of Junagad; the proportions, settled by the British Resident Col. Walker, A. D. 1807-08 being when reduced into our currency Rs. 7,874 to the Gaikwad and Rs. 2,490 (Zurtulubi) to the Nawab. See Aitchison's Treaties, Vol. 7, Appendix No. IX, which also shows that the State of Palitana has one "independent tribute payer" (*viz.*, the Thakur) "contains one hundred villages, yields a gross annual revenue of two lacs of rupees and that the Thakur enjoys second-class jurisdiction." See also Bombay Government Records, No. XXXVII, N.S., pages 74, 75, 107, 135. The rule of primogeniture prevails as to this principality, partition not being allowed, a prohibition indicative though not conclusively so, of a Raja: 7 Moo. Ind. App. 476; 5. *Ibid.*, 169; 6 *Ibid.*, 164; 1 Bom. H. C. Rep., 2nd Ed., App. pages xlii-xlvii.; 1 Strange, H. L., 235, 236.

The tribute as originally collected by the Gaikwad in Kathiawar was very much in the nature of black-mail, and was levied by an annual raid or foray of what was styled in Mulkgiri army. The history of the substitution for it in 1807-08 of the present

pacific system by which the tribute is collected by the British Government in Kathiawar on behalf of the Gaikwad and the Nawab of Junagad is to be found in Vol. VI of Aitchison's Treaties, pages 361—366, 370, 371, 399 and 400. The Chief of Kathiawar then also entered into engagements with sureties, providing to the general peace of the country (*Ibid.*, 364). Specimens of these engagements with the State of Limbdi are given at pages 500-503 of the Bombay Government Records, No. XXXVII, N.S., and at page 503 it is stated that similar engagements were at the same time concluded with various other talukas which are named, and (page 505) include *Palitana*. Whether those engagements were precisely the same does not appear. "But," continues Mr. Aitchison, "it was soon discovered that the Kathiawar Chiefs partly from their pecuniary embarrassments and partly from their weakness and the subdivision of their jurisdictions were incapable of acting up to the engagements which bound them to preserve the peace of the country and suppress crime. On the other hand the British Government was fettered in its efforts to effect an improvement in the administration by these very engagements, which it had mediated when the country was under the authority of the Peishwa and the Gaikwad and when the substitution of the direct control of the British supremacy for that of the Native Governments had not been contemplated. These engagements, besides considerations of financial and political expediency, prevented the subjection of the chiefs to ordinary British rule and no course of reform was left open save to introduce a special authority suited to the obligations of the British Government, the actual condition of the country and the usage and character of the inhabitants. Inquiries which had been instituted in 1825 showed that the Kathiawar Chiefs believed the Sovereignty of the country to reside in the power to whom they paid tribute; that before the British Government assumed the supreme authority, the Gaikwad had the right of interfering to settle disputed successions to punish offenders seized in chiefships of which they were not subjects to seize and punish indiscriminate

plunderers, to coerce chiefs who disturbed the general peace and to interfere in cases of flagrant abuse of power or notorious disorder in the internal government of the Chiefs. Based therefore upon these rights of the supreme power, the British Government in 1831 established a criminal court of justice in Kathiawar to be presided over by the Political Agent added by three or four Chiefs as assessors, for the trial of capital crimes in the States of Chiefs who were too weak to punish such offences, and of crimes committed by petty Chiefs upon one another or otherwise than in the legitimate exercise of authority over their dependents. Until the year 1853 every sentence passed by this court was submitted to the Bombay Government for approval; but now sentences not exceeding imprisonment for seven years do not require the sanction of superior authority. There are five Chiefs in Kathiawar, *viz.*, Joonagad, Nawanuggur, Bhownuggur, Poorbunder and Drangadra, who exercise first class jurisdiction, that is to say, have power to try for capital offences without permission from the Political Agent any persons except British subjects and eight, *viz.*, Wankaneer, Morve, Rajkot, Gondal, Dheral, Limdi, Wadhawan and Palitana who exercise second-class jurisdiction, that is to say, have power to try for capital offences without permission of the Political Agent, their own subjects only." Aitchison's Treaties, Vol. VI, pages 366, 367. A somewhat different definition of second-class jurisdiction is given in Captain Barr's Report of 31st August 1854, Bombay Government Records, No. XXXVII, N.S., page 136, where as to the Thakur of Palitana it is said: "The Chief has jurisdiction of crimes committed within his own territories by his own subjects, but he has not the power of life and death." Taking this to be so and that to a certain extent the criminal jurisdiction of the Thakur of Palitana has been circumscribed, and that the Gaikwar heretofore exercised, and the British Government now exercise a superintending and controlling power over him and the other Chiefs of Kathiawar far more substantial than that of the Emperor of Delhi over Calcutta A. D. 1800, when Lord Stowell in his judgment in the Indian

Chief described the latter as the empyrean sovereignty of the Moghal occasionally brought from the clouds for purposes of policy, but which hardly existed otherwise than as a phantom; yet the authorities to which we have referred with respect to the political status of the Chiefs of Kathiawar shows that the Thakur of Palitana is no ordinary subject, is a Prince and and has subjects of his own, is styled by British political officers an independent tribute payer and that certain international arrangements have been entered into between the Chiefs of Kathiawar and the British Government and do not afford a trace of any civil jurisdiction having been exercised over the Thakur of Palitana or the other Chiefs of Kathiawar by the Gaikwar formerly, or by our Courts since the British Government became the controlling power. Those governments may have interfered politically in cases of disputed succession to the principalities of Kathiawar, but that is very different from an exercise of ordinary civil jurisdiction. The learned counsel for the plaintiff indeed admitted that he was unable to maintain any instance of our Courts having assumed civil jurisdiction over any Chief of Kathiawar. Were there, however, any doubts as to the nature of the relations subsisting between these Chiefs and Her Majesty's Government it has been put an end to by the State paper which I shall now read and which was not—nor so far as we know were the authorities relating to Kathiawar already mentioned—brought to the attention of Sir Joseph Arnould. That document is an official extract (paras. 1 to 5) from a despatch from Her Majesty's Secretary of State for India to His Excellency the Right Honourable the Governor-General of India in Council, dated 31st August 1864, No. 54, Political:—

"1. I have taken into consideration in Council the important question submitted to Her Majesty's Government in the letter of Your Excellency's Government, No. 70 of 14th April 1864, respecting the political position of Kathiawar."

"2. I have read with interest and attention all the arguments which have been adduced on either side by the several members of the Governments of India and of Bombay. It is not

necessary that I should examine in detail these conflicting arguments or record an opinion with respect to their relative weight. It is sufficient to say that the Chiefs of Kathiawar have received formal assurance from the British Government that their rights will be respected, and that the Home Government of India, so lately as 1858, repudiated the opinion that the province of Kathiawar was British territory, or its inhabitants British subjects."

"3. At the same time there is no doubt that the British Government have for a lengthened period exercised powers which are unquestionably of a Sovereign character with the full recognition and acquiescence of the Chiefs and people have had interfered at all times when occasion required for the preservation of peace and maintenance of order."

"4. But we have never exercised the right to apply our Civil and Criminal Codes of Procedure to Kathiawar and whatever reforms we have introduced have been made in such a manner as to ensure the co-operation and support of the chiefs. It has been our aim not to undermine their authority and independence nor to undertake the internal administration of the province."

"5. Her Majesty's Government have no desire to claim any more direct and formal Sovereignty than has thus been exercised even since our first connection with Kathiawar nor to impose British Laws and Regulations on the Chiefs of the province."

(True extract given to Palitana Vakil).

(Sd.) S. C. LAW,
Acting Political Agent.

"RAJKOTE, 17*th June* 1870."

For these reasons and although the causes of action in this suit may have accrued in the island of Bombay, we are satisfied that this Court had not any jurisdiction to entertain this suit against the Thakur of Palitana. We shall not interfere with Sir Joseph Arnould's order whereby he declined to set aside the

decree and we, therefore, stay no rule upon the motion of defendant to make absolute the order *nisi* of the 8th of March 1870 which contemplated that the decree and other proceedings should be set aside or declared null and void, etc., but on the other hand we dismiss the judge's summons obtained by the plaintiff in chambers calling upon the defendant to show cause why the decree should not be executed against him, and we allow the cause shown by the defendant. The order though not in form a stay of execution, will, no doubt, operate as a permanent order to that effect. Looking on the one side at the suppression of the defendant's rank by the plaintiff and on the other at the defendant's delay in impeaching the decree and at the apparent of action we must say no costs of these proceedings to either party.

Attorney for the plaintiff: Shamrav Pandurang.

Attorney for the defendant: Remington, Hore and Langley.

CHUNDER MANIKKYA *v.* RAJCOOMAR NAVODEEP, 9 Cal. 1883.

The Raja of Hill Tipperah is a Sovereign Prince within the meaning of Chapter XXVIII of Act X of 1877 and cannot be sued personally in the Courts of British India except under the conditions specified in S. 433 of that Act.

The act of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction.

A member of the Royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain lands situate within British India and forming portion of the possession of the Rajah he was entitled to the post of Juboraj, succeed such land on the death of the Rajah. Held that British Courts had no jurisdiction to entertain the suit. Feudatories are as independent as Sovereign Princes (Act X of 1877, S. 433).

In making this decree the Court overruled an objection taken

from the first that the suit cannot be tried at all in the Courts of British India, and this question of jurisdiction is the main one with which we have to deal in this appeal.

This aspect of the case has been at great length and most completely put before us by the learned Counsel on either side, to whom the Court owes acknowledgments for the able manner in which they have assisted it in arriving at a conclusion. That conclusion is that our Courts have no jurisdiction to deal with either branch of the suit and that consequently the Lower Court ought to have dismissed it altogether.

It is hardly necessary to determine, for it does not seem to be questioned in this suit, that Hill Tipperah is a Sovereign State, in that it governs itself without dependence on any foreign power. It makes and administers its own laws, and the Maharajah admittedly exercises the power of life and death within his own territory.

Its acknowledgment of the British Government as the paramount power, and the nuzzar paid on the recognition by that Government of succeeding Maharajahs do not take from it the status which by the Law of Nations it is entitled to hold. See Wheaton's International Law.

The Advocate-General, on the other hand, has contended that the Maharajah being a Sovereign Prince is not personally subject to the jurisdiction of our Courts in any suit whatever.

We are of opinion that whatever may be the merits of this contention, it is certain that the suit now before us is one of which our Courts can take cognizance.

The learned Advocate-General's proposition is that the defendant Maharajah being a Foreign Sovereign Prince recognised by the Government of British India he cannot be sued personally in our Courts except under the provisions of Chap. XXVIII of the Code of the Civil Procedure. He cited numerous authorities to show that the principles of International Law protected Sovereigns recognised by any State from the jurisdiction of the Courts of such State. We understood Mr. Phillips to contend on the contrary that such immunity does not

attach to a Sovereign Prince unless it be expressly conferred upon him.

It seems to us however, that it is for the Courts, and not for the Government, to say whether or not any particular Chief or Prince is within the purview of that section. We look upon this passage as nothing more than an expression of opinion conveyed to the Judge of Tipperah, and we must add that we think it the expression of an erroneous opinion. For it has been shown to us that Hill Tipperah is a Sovereign State, and that the Maharajah defendant has been formally recognised by the British Government in India. We are, therefore, bound to hold that he is a Ruling Chief, and that he cannot be tried in the Courts of British India, except under the conditions specified in S. 433.

Before concluding, we should perhaps notice an argument that it is too late for the Maharajah to contend against the jurisdiction of our Courts inasmuch as he has frequently sued and been in them attorneying to their jurisdiction.

Further, it is a mistake to suppose that because the Maharajah chooses to waive his privilege in one suit he is thereby precluded from pleading it in any other. We hold, therefore, that the argument based upon previous conduct has no weight in respect of the question raised in this suit.

"*Queen's Bench Division*," 1894.

MIGHELL *v.* SULTAN OF JOHORE.

International Law—Foreign Sovereign, Immunity of—Extra-territoriality—Jurisdiction Submission to Jurisdiction—Proof of Status of Sovereign—Certificate of Secretary of State.

The Court of this country have no jurisdiction over an independent Foreign Sovereign unless he submits to the jurisdiction. Such submission cannot take place until the jurisdiction is invoked.

Therefore the fact that a Foreign Sovereign has been residing in this country, and has entered into a contract here, under an

assumed name, as if a private individual, does not amount to a submission to the jurisdiction or render him liable to be sued for breach of such contract.

A certificate from the Foreign or Colonial Office as the case may be is inclusive as to the status of such a Sovereign.

Motion to set aside an order for substituted service of a writ of summons in an action for breach of promise of marriage and to stay all proceedings therein on the ground that the Court had no jurisdiction over the defendant who was described in the writ as "The Sultan of the State and Territory of Johore, otherwise known as Albert Baker."

The plaintiff was introduced to the defendant in August 1885 as "Mr. Baker" and she had known him by the name of "Albert Baker" under which name he passed and was generally known ever since. The defendant promised her marriage in 1885. About September 1885 he took a furnished house at Goring in the name of Albert Baker and was known by that name, and no other in the district and neighbourhood. He always represented himself as a private individual and an ordinary subject of the Queen and was always treated as such. In October 1885 the plaintiff accidentally discovered that the defendant was the Sultan of Johore and thereupon he made her promise never to reveal who he was nor to call him by any other name than that of Albert Baker, saying that he wishes to conceal his real position and to preserve his *in cognito*. He remained in this country living at various places for some time and always represented himself and was treated by servants, tradesmen and others as a private individual and a subject of the Queen and always passed under the name of Albert Baker. He returned to this country after several years' absence in 1891 and again passed, represented himself and was treated as "Mr. Baker" and as a private individual and subject of the Queen living *in cognito* as before in a private house in the the Isle of Wight.

WILL, J.: I entertain no doubt in this case. In the first place it is clear that the proper mode of obtaining information

with respect to the status of the defendant was adopted by Wight, J., who communicated with and obtained a letter from the Colonial Office. We are told by that letter that the Sultan "generally speaking exercises without question the usual attributes of a Sovereign ruler." It is true as appears from the copy of the treaty annexed to that letter that he was bound himself not to exercise some of the rights of Sovereign ruler except in certain particular ways; but that does not deprive him of his character as an independent Sovereign. There can be no doubt that he is still independent Ruling Sovereign and this case must be decided upon exactly the same considerations as if the Ruler of some undoubted great Power—such as the King of Italy, of the President of the French Republic—had been sued in the Courts of this country. To begin with there is no precedent for Courts. On the contrary the proposition is opposed to every principle of International Law as applied to the persons of Sovereigns or those who represent them. The ground upon which the immunity of Sovereign rulers from process in our Courts is recognised by our law is that it would be absolutely inconsistent with the status of an independent Sovereign that he should be subject to the process of a foreign tribunal. It has been attempted in some cases—in that of the Charick, for instance—to say that a Sovereign may lose his immunity and privileges by laying down his character as a Sovereign and entering into trading transactions as a private person in another country; and our attention was called to certain dicta (which were not essential to the decision of the case) of Sir Robert Phillmore in the Charick as supporting that view. But those dicta were dissented from in the judgment of the Court of Appeal in the Parlement Belge. In the final part of the judgment that Court dealt with the very question of the amenability of a Foreign Sovereign to the process of our Courts and held that one objection which was fatal to the attempt to bring the Sovereign into the Admiralty Court be means of seizing a vessel was that quite independently of the right of the Foreign Sovereign to have the public property of his State respected it was contrary to International Law and the comity of

nations that an independent Foreign Sovereign should be directly impleaded in the Courts of this country. A considerable part of the judgment is devoted to dealing with the case from that point of view. It was said that the process of attachment in the Court of Admiralty by seizing a vessel was an indirect mode of impleading the Sovereign although the Sovereign was not personally made a defendant in the action and that which could not be done directly could not be done indirectly and therefore that such a process could not be allowed on the broad general principle that a reigning Sovereign is not subject to the jurisdiction of a foreign country.

No authority of any kind to qualify that broad principle laid down by the Court of Appeal has been brought to our notice, but we have been referred to certain dicta of authors of treaties on International Law. One of those dicta suggests that if an independent Sovereign Ruler comes into this country *in cognito* he is amenable to the jurisdiction of our Courts although he chooses to claim his immunity. That dictum has never been acted upon and the suggestion has probably arisen from a loose way of looking at the case of Duke of Brunswick *v.* The King of Hanover. That was a very peculiar case, because The King of Hanover was not only a Foreign Sovereign but also a British Peer. He was sued in his character of a British Peer and it was alleged that the transactions in respect of which it was sought to make him amenable to the jurisdiction of the Courts here had nothing to do with his character of King of Hanover. It was said by the Court that inasmuch as he had two distinct capacities one of which did not touch his character and attributes as a ruling Sovereign he might be sued in the Courts of this country in respect of transactions done by him in his capacity as a subject. But the Sultan of Johore is in no sense a British subject.

It is said that he came to this country *in cognito*. I do not know that he did. The affidavit says that he was passing under the name of Albert Baker. Unquestionably the plaintiff was under no misapprehension on the subject. According

to her own affidavit she knew who and what he was in October 1885. If anything turned upon the question of fact I should say that it is not shewn in August 1893, when his writ was issued he was here otherwise than as a Sovereign Prince. That seems to me, however, immaterial because I am of opinion that if he was in fact a sovereign prince when the action was brought, he was not and is not subject to the jurisdiction of the Courts of this country simply because he was here *in cognito*. I think that Munden *v.* Duke of Brunswick is a strong authority against the proposition contended for by the plaintiff's counsel. To say that it is an authority in the plaintiff's favour is the result of a confusion of thought in respect of two propositions which ought to be kept distinct. It is one thing to say that a Foreign Sovereign is capable of making an effectual contract in this country, it is quite another thing to say that he can be sued in the Courts of this country. In Munden *v.* Duke of Brunswick the Duke was sued for a debt due to an annuity deed. He pleaded that at the time of making the deed he was the reigning Sovereign Duke of Brunswick and Luneburg and that "from the time of the making thereof continually and at the time of the commencement of this suit, defendant has been and still is justly entitled to all the rights, prerogatives and privileges appertaining to him as the Duke of Brunswick and Luneburg." The Court held the plea bad for not stating that the defendant was reigning Sovereign Duke at the time when he was sued. They said that he might have been deposed or have abdicated before the action was brought. But the decision assumes that if the plea had been drawn otherwise and had contained all the material allegations, it would have been a good plea, and that view seems to me consistent with every authority on the subject. For these reasons I am of opinion that the order for substituted service of the writ should be set aside and that the order for a stay of proceedings should be made.

LAWRENCE, J.: I am entirely of the same opinion on the grounds which have been already given. I will only add that in the same year in which the decision in the Parlement Belge

was given, James, L.J., one of the judges who decided that case, pointed out in Strousbery *v.* Republic of Costa Rica the only two exceptions to the rule with respect to actions against Foreign Sovereigns. One is that "where a Foreign Sovereign or State comes into the municipal courts of this country for the purpose of obtaining a remedy then by way of defence to that proceeding by way of counter-claim if necessary to the extent of defeating that claim the person sued here may file a cross claim or take any other proceeding against that Sovereign or State for the purpose of enabling complete justice to be done between them." The other exception is "the case in which a Foreign Sovereign may be named as a defendant for the purpose of giving him notice of the claim which the plaintiff makes to funds in the hands of third person or trustee over whom this Court has jurisdiction."

LORD ESHER, M.R. For the purposes of my judgment I must assume that the Sultan of Johore came to this country and took the name of Albert Baker and that the plaintiff believed that his name was Albert Baker and I will go so far as to assume for the present purpose that he deceived her by pretending to be Albert Baker and then promised to marry her and that he broke his promise. Whether these matters could be proved if the case went further is entirely another matter, but at the present stage of the case I will assume them to be true. At length when he is sued he alleges that he is a Sovereign Prince and that no action can be maintained against him in the municipal courts of this country for anything which has been done. An elaborate argument has been presented to us on behalf of the plaintiff which was not altogether new for I remember to have heard something very like it in the case of the Parlement Belge. In this argument there was only one point which appeared to have much weight, *viz.*, that very great judges in the House of Lords and in the Queen's Bench had formerly declined to determine the principal point now raised. If the matter had stood there I should have thought that it might be necessary for us to look into all the authorities on the subject. But I think that we did so in the case

of the Parlement Belge and that the point in this case is not now before the Court of Appeal for the first time, but was really decided in that case which decision would of course be binding on us in the present case even if any of us did not agree with it.

The first point taken was that it was not sufficiently shewn that the defendant was an independent Sovereign Power. There was a letter written on behalf of the Secretary of State for the Colonies on paper bearing the stamp of the Colonial Office and which clearly came from the Secretary of State for the Colonies in his official character. He is on Colonial matters the adviser of the Queen and I think the letter has the same effect of the present purpose as a communication from the Queen. It was argued that the judge ought not to have been satisfied with that letter, but to have informed himself from historical and other sources as to the status of the Sultan of Johore. It was said that Sir Robert Phillmore did so in the case of the Cherick. I know he did; but I am of opinion that he ought not to have done so; that when once there is the authoritative certificate of the Queen through her minister of State as to the status of another Sovereign that in the Courts of this country is decisive. Therefore this letter is conclusive that the defendant is an independent Sovereign. For this purpose all Sovereigns are equal. The independent Sovereign of the smallest State stands on the same footing as the monarch of the greatest.

It being established that the defendant is in that position can he be sued in the Courts of this country? It is not contended that he could unless by coming into this country and living there under a false name, and—I will assume for the present purpose—by so deceiving the plaintiff he has lost his privilege as an Independent Sovereign and made himself subject to the jurisdiction. In the case of the Parlement Belge the whole subject was carefully considered. As I have pointed out great judges in the House of Lords and the Queen's Bench had in previous cases declined to decide this point, but I think that this Court was there called upon to decide the point and did decide it. I said in giving the judgment of the Court in that

case after citing passages from various authorities and a minute examination of the cases on the subject (see p. 214 of the report). "The principle to be deduced from all these cases is that as a consequence of the absolute independence of every Sovereign authority and of the international comity which induces every Sovereign State each and every one declines to exercise by means of its Courts any of its territorial jurisdiction over the person of any Sovereign or Ambassador of any other State or over the public property of any State which is destined to public use, or over the property of any Ambassador though such Sovereign Ambassador or property be within its territory and therefore but for the common agreement subject to its jurisdiction."

It appears to me that by the authority of this Court the rule was thus laid down absolutely and without any qualification. We had not then to deal with the question of a Foreign Sovereign submitting to the jurisdiction everybody knows and understands that a Foreign Sovereign may do that. But the question is, how? What is the time at which he can be said to elect whether he will submit to the jurisdiction? Obviously as it appears to me it is when the Court is about or is being asked to exercise jurisdiction over him, and not any previous time. Although up to that time he has perfectly concealed the fact that he is a Sovereign and has acted as a private individual, yet it is only when the time comes that the Court is asked to exercise jurisdiction over him that he can elect whether he will submit to the jurisdiction. If it is then shewn that he is an Independent Sovereign and does not submit to the jurisdiction the Court has no jurisdiction over him. It follows from this that there can be no enquiry by the Court into his conduct prior to that date. The only question is whether when the matter comes before the Court and it is shewn that the defendant is an Independent Sovereign he then elects to submit to the jurisdiction. If he does not the Court has not jurisdiction. It appears to me that this is the result of the principles laid down by the Parlement Belge. Therefore I think the Court has no jurisdiction to enter

into any inquiry into the matters alleged by the plaintiff, the defendant being an Independent Sovereign and not submitting himself to the jurisdiction. For these reasons the appeal must be dismissed.

LOPES, L.J.: It was contended for the plaintiff that the status of the defendant had not been satisfactorily established; but I am clearly of opinion that it was, and that the defendant is an Independent Sovereign. That such a Sovereign is entitled to immunity from the jurisdiction of our Courts is beyond all question. That proposition was established if it needed to be further established by the case of the Parlement Belge. The law on the subject is clearly laid down by Vattel. He says, (Law of Nations—Translation by J. Chitty—ed. 1834, p. 484); "we cannot introduce in any more proper place an important question of the Law of Nations which is nearly allied to the right of embassies. It was asked what are the rights of a Sovereign who happens to be in a foreign country and how is the master of that country to treat him? If that Prince become to negotiate or to treat about some public affair he is doubtless entitled in a more eminent degree, to enjoy all the rights of Ambassadors. If he become as a traveller his dignity alone and the regard due to the nation which he represents and governs shelters him from all insult gives him a claim to respect an attention of every kind and exempts him from all jurisdiction." But there is no doubt that a Foreign Sovereign may submit to the jurisdiction of the Courts of this country and it was contended that in this particular case he had so submitted, because he had taken an assumed name and acted as a private individual. We are asked from that to infer that fact of submission to the jurisdiction. I am of opinion that no such inference can be drawn. In my judgment the only mode in which a Sovereign can submit to the jurisdiction is by a submission in the face of the Court, as for example by appearance to a writ. That he intends to waive his rights by taking an assumed name cannot be inferred. On this point I will again refer to Vattel's Law of Nations, p. 485, where he says, "On his making himself known he cannot

be treated as subject to the common laws; for it is not to be presumed that he has consented to such a subjection and if a Prince will not suffer him in his dominions on that footing he should give him notice of his intentions."

It seems to me clear therefore that in this case there was no submission to the jurisdiction and nothing from which such submission could be inferred. For these reasons I agree that the appeal should be dismissed.

KAY, L.J.: The status of a Foreign Sovereign is a matter of which the Court of this country take judicial cognisance, that is to say, a matter which the Court is either assumed to know or to have the means of discovering, without a contentious inquiry as to whether the person cited is or is not in the position of an Independent Sovereign. Of course the Court will take the best means of informing itself on the subject, if there is any kind of doubt and that matter is not as notorious as the status of some great monarch such as the Emperor of Germany. Here the person cited was the Sultan of Johore and the means which the judge took of informing himself as to his status was by enquiry at the Colonial Office. In answer to that inquiry there came a letter from that office signed by an official there, and supporting to be written by the direction of the Secretary of State for the Colonies to the effect which has been stated. It was contended that that letter was not sufficient and did not satisfactorily establish the status of the defendant as an Independent Sovereign. I confess I cannot conceive a more satisfactory mode of obtaining on the subject than such a letter. Proceeding as it does from the office of one of the Principal Secretaries of State and purporting to be written by his direction, I think it must be treated as equivalent to a statement by Her Majesty herself, and if Her Majesty condescends to state to one of her Courts of Justice, that an individual cited before it is an Independent Sovereign, I think that statement must be taken as conclusive. But it was argued that the letter itself contains by reference a confutation of its statements; that it refers to a treaty and on looking to that treaty it appears that its terms

are in effect that the Sultan should have certain protection he on his part engaging not to enter into treaties with any Foreign Power, and that such a treaty amounts to an abnegation of his Sovereign Power, which destroyed his position as an Independent Sovereign. But if he is not an Independent Sovereign he must be a dependent one. I asked during the argument on whom he was dependent and failed to get a satisfactory answer. The agreement by the Sultan not to enter into treaties with other Powers does not seem to me to be an abnegation of his right to enter into such treaties, but only a condition upon which the protection stipulated for is to be given. If the Sultan disregards it the consequence may be the loss of that protection or possibly other difficulties with this country; but I do not think that there is anything in the treaty which qualifies or disproves the statement in the letter that the Sultan of Johore is an Independent Sovereign.

The next point is this. It is said that an Independent Sovereign may waive his right to immunity and may treat himself as subject to the jurisdiction. I agree, but how is that to be done? This seems to me in the first place quite clear. Supposing by way of illustration that some well-known potentate, such as one of the great European Emperors were to be sued in a Court of this country, and took no kind of notice of the proceeding; it would be the duty of the Court to recognise his position and to say at once that the person cited was an Independent Foreign Sovereign over whom it had no jurisdiction. Therefore it is not right to say that such a Sovereign must come forward and assert his right. I do not think that he need. I think the Court would be bound to take notice of the fact that it had no jurisdiction. But it is said that by the acts which the defendant previously committed he waived his rights; that wishing to conceal his position, he came to this country as a private individual under the name of Albert Baker and under that name entered into the contract with the plaintiff upon which this action is founded and that by so doing he shewed that he intended to be treated while he lived in this country as a private

individual and as such to be subject to all jurisdiction which the Courts of this country could have over a private individual. That raises the question whether Sovereign who so acts, who—I will assume—has lived in this country perfectly *in cognito* thereby waives all his privilege as an Independent Sovereign. No case has been cited to that effect the nearest approach to an authority on the subject is a dictum of Lord Campbell in the case of Wadsworth *v.* The Queen of Spain as reported in the Law Journal. That case is reported in two places one being the authorised report in the Queen's Bench Reports, the other the report in the Law Journal. The dictum in question only appears in the latter. It does not appear to me that under those circumstances it is of very great authority. I cannot help suspecting that when the authorized report came before Lord Campbell for revision as it may very likely have done he struck the dictum out not wishing it to appear. Besides this dictum the only authorities relied on where certain passages in text-books which appear to be founded upon it. In the text-books writers of great authority such as Vattel nothing of the kind is to be found; there is no intimation that such matters as those here relied on amount to a waiver of immunity when the Sovereigns to be sued. The passage cited from Vattel by Lopes, L.H., is emphatic on this very point and shews that the time at which the immunity is to be waived must be when an action is brought against the Foreign Sovereign and when it is brought to the attention of the Court by reason of its judicial knowledge or from other information that the person sued is a Foreign Sovereign. I should put it thus; the Foreign Sovereign is entitled to immunity from civil proceedings in the Courts of any other country unless upon being sued he actively elects to waive his privilege and to submit to the jurisdiction. Here the defendant has not done that, but just the contrary. For these reasons I agree with the Divisional Court in thinking that the defendant is entitled as a Foreign Sovereign, to be treated as free from liability to be sued in this country; and that he has done nothing to waive that right.

I should say if it were necessary to decide the question that it is not shewn that there was any deception in the case, because the plaintiff admits that from 1885 to 1893 she was aware of the status of the defendant. But, however, that may have been the principle being well settled by abundant authority that unless the Foreign Sovereign chooses to waive his rights when sued, he is not liable to the jurisdiction of the Courts of this country, I think that this appeal fails and must be dismissed.

STATHAM *v.* GAEKWAR OF BARODA.

A Foreign Ruling Prince is not capable of being made a co-respondent in a suit for divorce in the High Court of Justice in England and where such a Prince had been named as co-respondent in a petition his name was, on proof of his status, ordered to be struck out.

A certificate from India Office was accepted as evidence of the status of the person in question following the principle laid down in Mighell *v.* Sultan of Johore (1894) I. Q. B. 149.

There is no doubt that an Independent Reigning Sovereign cannot by the rules of the International Law be made against his will a party to proceedings in our Courts. He may choose to sue, and if so a counter-claim may be raised against him as plaintiff, but he cannot be made a defendant.

What then is the status of the Gaekwar of Baroda?

The certificate from the India Office is as follows:

India Office Certificate.

"The Gaekwar of Baroda has been recognised by the Government of India as a Ruling Chief governing his own territories under the suzerainty of His Majesty. He is treated as falling within the class referred to in the Interpretation Act, 1889, section 18, sub-section 5, as that of Native Princes or Chiefs under the suzerainty of His Majesty exercised through the Governor-General of India. The British Government does not regard or treat His Highness' territory as being part of British India or His Majesty's dominions, and it does not regard or treat him or his subjects as subjects of His Majesty."

"But, though His Highness is thus not Independent he exercises as Ruler of his State various attributes of Sovereignty, including internal Sovereignty, which are not derived from British Law, but inherent in the Ruling Chief of Baroda, subject, however, to the suzerainty of His Majesty the King of England and to the exercise by the Government of India of such of the rights and powers of territorial Sovereignty as have by treaty, usage or otherwise been possessed and are exercised by the suzerainty such as, for instance, the exercise of jurisdiction over Europeans and Americans in Baroda."

What is the meaning of the word "Suzerainty," and what are its essentials?

"Suzerainty" is a term applied to certain international relations between two Sovereign States whereby one, whilst retaining a more or less limited Sovereignty, acknowledges the supremacy of the other.

Grotius (the father of International Law) says unequal leagues are made not only between the conquerors and the conquered, but also between peoples of unequal power, even such as never were at war with one another. Grotius and Vattel agree that in the unequal alliances the inferior power remains a Sovereign State.

In short the weaker power may exercise the rights of Sovereignty so long as by so doing no detriment is caused to the interests or influence of the suzerain power.

In my opinion this aptly states the true status of the present Gaekwar of Baroda and is consistent with the status of that Sovereign Prince as defined by the certificate from the India Office, and it follows that His Highness by International Law is not capable of being made a co-respondent.

"*Indian Prince in Trouble.*"

CLEARING UP WRONG IDEA.

London, 22nd December, 1908.

Mr. Burns in a written reply to a question which suggested that a son of the Maharajah of Cooch Behar had availed himself

of his princely immunity to escape penalties for injuring a gentleman in a motor car collision said that the Prince had submitted himself to Justices who, however, held that they had no jurisdiction.

THE QUEEN *v.* VENCANNA AND NARASA.

The Sessions Court of Bellary has no jurisdiction under the Penal Code to try Native subjects of the Jahagirdar or Rajah of Sundoor for offences committed in the plateau of Ramdurg upon Native inhabitants of the village Ramdurg.

Ramadurg is a portion of the territory of Sundoor and the Rajah is in the position of a Native Chief or Ruler.

A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation :—

"It being probable that as European Officers take up their residence on the said hill, many servants, tradesmen, private persons and others will reside there, I have relinquished to the Company's Government the Police and Magisterial functions of maintaining peace and trying and punishing offences committed by such people such as violence, petty crimes, thefts, murder, etc. The Collector is to have jurisdiction in such matters."

Held : that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, not Native subjects of the Rajah and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons.

Judgment :—This is a case referred to for the consideration of that Court under section 404 of the Criminal Procedure Code, and the question raised is, whether the Sessions Judge of Bellary has rightly decided that he is without jurisdiction to try certain persons charged with having committed the offences under the Penal Code of wrongful restraint and kidnapping on the plateau of Ramdurg. But the case involves also the broad question

whether or not the administration of criminal law over the plateau rests entirely with the Jahagirdar or Rajah (as he is commonly styled) of Sundoor as the Chief or Ruler of a Native State or with Her Majesty's Indian Government.

The person charged with the offences were, it appears, Native Walkakars or Talaries in the employ of the Rajah and the persons alleged to have been wrongfully restrained and kidnapped were native inhabitants of the village of Ramdurg. The solution therefore of the point of the Sessions Court's jurisdiction depends solely upon the place of the alleged offences being or not being part of the territories vested in Her Majesty by the Statute 21 and 22 Victoria, Chap. CVI. Now unquestionably by the Notification published in the Gazette of the 24th October 1848, the then Government declared the place to be incorporated with the Talook of Kodlighi in the District of Bellary and extended to all offences there committed the jurisdiction of the criminal courts and police authorities of the district and if the fact had been that Her Majesty's Government insisted on the enforcement of that Notification against the Rajah in the interests of the State whether rightfully or wrongfully this and every Court of Justice sitting within the Queen's Dominions would be bound to treat that act of incorporation as conclusive and at once uphold the jurisdiction of the Sessions Court. But the Acting Advocate-General representing the Government has altogether disclaimed any reliance on the Notification as an independent act of State and rests the claim of jurisdiction on the Rajah's subordinate position under his Sannad and on the Tahanamah of the 25th July 1847 which appears from the Government Order of the 2nd October 1865 to have been avowedly the basis of the Notification.

We have then in the first place to consider whether there is any support for the contention that the Rajah is not in the position of the Chief or Ruler of a State. The history of Sundoor appears to be this:—It was until the question of Hyder Ally part of the dominions of the Maharatta Ruler of Gooty and in 1790 it was retaken from Tippoo Sultan.

"*The Indian Law Reports, Calcutta Series,* Vol. XXV, 1898."

MAHUMMAD YUSUF-UD-DIN, Petitioner *v.* QUEEN-EMPRESS (Res.*)

(On appeal from the Chief Court of the Punjab).

Jurisdiction of Criminal Court—Criminal Jurisdiction along the Railway through Indian Independent State—Locality of crime—Illegal arrest on lands occupied by the Hyderabad State Railway.

The authority for the exercise of criminal jurisdiction by the Government of India upon lands within the limits of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The Railway lands remain part of his dominions.

The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be "along the line of railway as is the case on other lines running through Independent States."

This jurisdiction, notwithstanding any words in the Notification of the Government of India of the 22nd March 1888 (which could not itself give any authority or add to that granted by the Nizam) does not satisfy the arrest on the lands of the Hyderabad State Railway of a subject of the Nizam under the warrant

* PRESENT: The Lord Chancellor, Lord Watson, Lord Hobhouse, Lord Macnaghten, Lord James of Hereford, Sir Richard Couch and Mr. Way.

Part III, Section 4, *Sub-Section* 2-*B* (*a*), 384 *i*. Immune from jurisdiction. An independent sovereign prince is privileged from suit in the Courts of British India. The Thakur of Palitana is an independent sovereign prince. Ladkuverbai *v.* Sarsangji Pratabsangji (1870) 7 Bom. O. C. 150 Ind. 384. ii. The Rajah of Hill Tipperah is a sovereign prince within Ch. XXVIII, of Act X of 1877 (India), and cannot be sued personally in the Courts of British India except under the conditions specified in s. 433 of that Act. The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction.

A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land forming portion of the possessions of the Rajah, he was entitled to the post of Jubaraj and to succeed to such land on the death of the Rajah. Held: the British Courts had no jurisdiction to entertain the suit it not being one for immoveable property. Beer Chunder Manikkya *v.* Raja Coomar Nobodeep Chunder Deb Burmono (1883) I. L. R. 9 Cal. 535; 12 C. L. R. 465.—Ind.

of the Magistrate of a District in British India on a charge of a criminal offence committed in British India, and unconnected with the Hyderabad Railway Administration.

The mere presence of the accused on the Railway lands over which criminal jurisdiction had been granted as above was no legal ground for his arrest under the warrant of the Court in British India, his offence, if committed at all, not having been committed on those lands, and not having been connected with the Railway.

PART V.

Digests.

"*The English and Empire Digest*" with complete Annotations.

I.

Introduction, Action, Admiralty, Agency.

Butterworth & Co.

(B) As Defendants.

(a) In General.

Immune from jurisdiction:—An action cannot be maintained in any English court against a foreign potentate for anything done or omitted to be done by him in his public capacity as representative of the nation of which he is the head; and no English court has jurisdiction to entertain any complaints against him in that capacity.

Where a plaint was entered in the Lord Mayor's Court against the Queen of Portugal "as Reigning Sovereign and supreme head of the nation of Portugal" to recover a debt alleged to be due from the Portuguese Government and a foreign attachment had issued according to the custom of London, the Court made absolute a rule for prohibition to restrain proceedings in the action and in the attachment. The same principle was applied to a case where a plaint was entered in the Lord Mayor's Court against the Queen of Spain, not expressly as Reigning Sovereign and head of the Spanish nation, but where it appeared by affidavit that plaintiff's sole cause of action arose upon a Spanish Government bond purporting to have been issued under a decree of the Coutes sanctioned by the Regent of Spain, in the name of the Queen, then a minor. The writ of prohibition may in such cases be granted on the application of the Queen (defendant)

before she has appeared to the action in the Lord Mayor's Court or on the application of the garnishee, either before or after he has pleaded *nil debet*:—Wadsworth *v.* Spain (Queen); De Haber *v.* Portugal (Queen) (1851) 17 Q. B. 171; 8 State Tr. N. S. 53; 20 L. J. Q. B. 488; 16 Jur. 164; 117 E. R. 1246; *Sub nom* R. *v.* London Corpn. *Re* Wadsworth *v.* Spain (Queen), Re De Haber *v.* Portugal (Queen) 18 L. T. O. S. 39, 40.

Annotations:—Refd. Westoby *v.* Day (1853) 2 E. & B. 605; Gladstone *v.* Musurus Bey (1862) 1 New Rep. 178; London Corpn. *v.* Cox (1867) L. R. 2 H. L. 239; Lariviere *v.* Morgan (1872) 7 C. H. App. 550; Cooke *v.* Gill (1873) L. R. 8 C. P. 107; Whinney *v.* Schmidt (1873) L. R. 8 C. P. 118; The Charkieh (1873) L. R. 4 A. & E. 59; The Parlement Belge (1880) 5 P. D. 197, C. A. Mentd. Portsmouth *v.* Inclosure Comrs. (1861) 3 L. T. 779; Cox *v.* London Corpn. (1862) 32 L. J. Ex. 64; Kingsford *v.* G. W. Ry. Co. (1864) 10 Jur. N. S. 804; Frith *v.* Guppy (1866) L. R. 2 C. P. 32; Worthington *v.* Joffries (1875) L. R. 10 C. P. 379; Mighell *v.* Johore (1894) Q. B. 149 C. A.; The Broadmayne (1916) I. P. 64 C. A.

385. Brunswick *v.* Hanover, No. 403, post.

For full anns., see S. C. No. 403, post.

386. Munden *v.* Brunswick, Nos. 391, 401, post.

For full anns., see S. C. No. 401, post.

387. An independent Foreign Sovereign is entitled to immunity from civil proceedings in the Courts of this country unless upon being sued he elects to waive his privilege and submit to the jurisdiction. Mighell *v.* Johore, Nos. 394, 404, 406, post.

Annotation:—Refd. *Re* Suarez *v.* Suarez (1917) 2 Ch. 131.

For full anns., see S. C. No. 394, post.

388. *Divorce.*—A Foreign Sovereign cannot be made a co-respondent in a suit for divorce in the High Court in England where a Prince has been named as co-respondent in a petition, the Court will, on proof of his status, order his name to be struck out. Statham *v.* Statham and Baroda (Gaekwar), (1912); page 92; 81 L. J. P. 33; 105 L. T. 991; 28 T. L. R. 180; S. C. Nos. 405, 408, post.

Admiralty.—See Admiralty.

(*b*) Exceptions to the Rule.

389. *Administration of Fund—Counter-claim.*—To attempt to make a Foreign Sovereign or State amenable to the jurisdiction of our Courts would be offensive to the spirit and principles of International Law and a Foreign Sovereign or State cannot be served with a writ or other process of our Courts. The only apparent exceptions to this rule are: (1) Where a Foreign Sovereign or State has come into our Courts to seek redress against defendant in which case defendant may assert any claim he has by way of counter-claim or cross-action in order that complete justice may be done. (2) Where both plaintiffs and a Foreign Sovereign or State have claims upon funds in the hands of third person within the jurisdiction of the English Courts, in which case the Foreign Sovereign or State may be joined as defendant in order to be enabled to assert any claim to the funds in question. Strousberg *v.* Costa Rica Repubic (1880) 44 L. T. 199, 29 W. R. 125 C. A., S. C. No. 374, *ante.*

Annotations:—Consd. South African Republic *v.* Transvaal Northern Ry. Co. (1897) 67 L. J. C. H. 92; South African Republic *v.* La Compagnie Franco Belge Du Chemin de Fer du Nord (1898) 1 Ch. 190. Refd. Mighell *v.* Johore (1894) 1 Q. B. 149 C. A.

390. If Foreign Government or State having notice of a suit instituted in England for the administration of a fund in which it is entitled to claim an interest does not appear and submit its right to the jurisdiction of the Court, the Court will proceed in its absence.

In November 1870, the French Government instructed their Bankers in London to open a special credit in favour of plaintiff for £40,000, to be paid to him rateably as certain goods contracted to be supplied by plaintiff should be delivered. Part of the contract was performed and a proportionate part of the money was paid to plaintiff but a dispute having arisen as to the rest of the contract, plaintiff filed his bill against the bankers and the French Republic for a declaration and performance of the

trusts of the residue of the £40,000. The French Republic did not appear :—*Held* the Court had jurisdiction over the fund, and in the absence of the French Republic would proceed to ascertain as it best could the rights of the parties who appeared. Morgan *v.* Lariviere (1875) L. R. 7 H. L. 423 ; 44 L. J. Ch. 457 ; 32 L. T. 41 ; 23 W. R. 537 ; affg. S. C. *sub nom* Lariviere *v.* Morgan (1872) 7 Ch. App. 550.

Annotations :—Refd. The Charkieh (1873) L. R. 4 A. & E. 59 ; Foreign Bondholders Corpn. *v.* Pastor (1874) 23 W. R. 109; The Parlement Belge (1880) 5 P. D. 197, C. A. Ment.; Twycross *v.* Drefus (1877) 5 Ch. D. 605 C. A.

Counter-claim—See Nos. 375, 376, 389, *ante.*

391. *Waiver*—Defendant having entered an appearance in person as "C. F. A. W., Duke of Brunswick and Luneberg, sued as C. F. A. W. D.' Estate, commonly called Duke of Brunswick," delivered a plea to the jurisdiction, with an affidavit of verification, respectively intituled "C. F. A. W., Sovereign Duke of Brunswick and Luneberg, sued as C. F. A. W. D'Estate, commonly called Duke of Brunswick." Plaintiff, treating the plea as a nullity, signed judgment. The Court refused to set aside the judgment without an affidavit of merits. Munden *v.* Brunswick, No. 386, *ante* ; No. 401, post.

Annotations :—Refd. Wadsworth *v.* Spain (1851) 17 Q. B. 171 ; London Corpn. *v.* Cox (1867) L. R. 2 H. L. 239.

For full anns., see S. C. No. 401, post.

392. *Extent of*—Plaintiff brought an action to restrain K and his agent in England and A & Co., agents for the Japanese Government, from infringing plaintiff's patent for the manufacture of shells and projectiles. Shells alleged to be infringements of the patent had been made by K in Prussia and had been purchased there for the Japanese Government and brought to England to be put on board Japanese ships of war and taken to Japan. In December 1877, an injunction was granted restraining A & Co, from allowing removal of the shells. In May the Mikado of Japan obtained leave to be added as defendant to the suit so far as it might be necessary for applying for leave

to remove the shells. The M. R. on the application of the Mikado having made an order giving him leave to remove the shells notwithstanding the injunction. Plaintiff appealed. Held: (1) the Court had no jurisdiction to interfere with the property of a Foreign Sovereign in this country; (2) the Mikado was at liberty to remove the shells; (3) the Mikado in submitting to be made a defendant in the action for the purpose of obtaining leave to remove his property did not thereby lose his rights as a Foreign Sovereign: Vavasseur *v.* Krupp (1878) 9 Ch. D. 351; 39 L. T. 437 C. A.

Annotations:—Apld. The Parlement Belge (1880) 5 P. D. 197 C. A. Mentd. Moses *v.* Marsden (1892) 1 Ch. 487 C. A.; *Re* Miller's Patent (1894) 63 L. J. Ch. 324; British Westinghouse Electric and Manufacturing Co. *v.* Electrical Co. (1911) 55 Sol. Jo. 689.

393. *Acts amounting to—Semble*: if a Sovereign assumes the character of a trader, and sends a vessel belonging to him to this country to trade here, he must be considered to have waived any privilege which might otherwise attach to the vessel as the property of a Sovereign. The Charkieh (1873) L. R. 4 A. & E. 59; 42 L. J. Adm. 17; 28 L. T. 513; 1 Asp. M. L. C. 581, S. C. No. 409, post.

Annotations:—Distd. The constitution (1879) 4 P. D. 39. Consd. The Parlement Belge (1880) 5 P. D. 197 C. A. Refd. Mighell *v.* Johore (1894) 1 Q. B. 149 C. A.; Foster *v.* Globe Venture Syndicate (1900) 82 L. T. 253. Mentd. The Heinrich Bjorn (1885) 10 P. D. 44 C. A.

394. *Time for—Acts not constituting*.—A Foreign Sovereign cannot submit to the jurisdiction until the jurisdiction is involved. The fact that a Foreign Sovereign has been residing in this country and has entered into a contract here, under an assumed name, does not amount to a submission to the jurisdiction, or render him liable to be sued for breach of the contract. Mighell *v.* Johore (Sultan) (1894) 1 Q. B. 149; 63 L. J. Q. B. 593; 70 L. T. 64; 58 J. P. 244; 10 T. L. R. 115; 9 R. 447 C. A. S. C. No. 387, *ante*; Nos. 404, 406, post.

Annotations :—Consd. *Re* Republic of Bolivia Exploration Syndicate (1914) 1 Ch. 139. Mentd. Foster *v.* Globe Venture Syndicate (1900) 1 Ch. 811 ; *Re* Suarex *v.* Suarex (1917) 2 Ch. 131.

395. *Unauthorised act of agent* :—A vessel, the property of a Foreign Sovereign, was arrested in an action for damage by collision. Thereupon the local agent for the vessel in England, without the knowledge or authority of the Foreign Sovereign, instructed solicitors who procured the release of the vessel by giving an undertaking to put in bail and also entered an appearance in the action unconditionally. Plaintiffs, on being informed of the facts, refused to allow the action to be dismissed :— *Held* the action must be dismissed with costs.—The Jassy (1906) P. 270 ; 75 L. J. P. 93 ; 95 L. T. 363 ; 10 Asp. M. L. C. 278.

Annotation :—Refd. *Re* Republic of Bolivia Exploration Syndicate (1914) 1 Ch. 139.

(*c*) Proceedings against Agents.

396. *Sovereign to be made party* :—The object of the suit was to charge defendant in respect of acts done by him as agent of the King of Spain :— *Held* : the King of Spain must be named as a party to the suit. De La Torre *v.* Bernales (1818) 1 Hov. Supp. 149, 34 E. R. 729.

Annotation :—Refd. Brunswick *v.* Hanover (1844) 6 Beav. 1.

397. A bill was filed against a firm in London as agents of the Peruvian Government and receivers of moneys from that Government which were to be applied by them as trustees in accordance with the terms of the Peruvian Loan, 1862. The Peruvian Government was not made a party to the bill :— *Held* : the bill was demurrable for want of parties. Smith *v.* Weguelin (1867) 15 W. R. 558.

398. *Action not maintainable against agent.*—The bond of a Foreign Government creates nothing, but a debt of honour, and the promise contained in it cannot be enforced in the Courts of this country against English agents of the Government who have funds belonging to it in their hands, even though the Government

after notice of an action against the agent could be maintained, it would amount to an assumption of a jurisdiction over the foreign Government. As the latter cannot be sued in the Courts of this country, neither can its agents be sued in the absence of the principals. Twycross *v.* Dreyfus (1877) 5 Ch. D. 605; 46 L. J. Ch. 510; 36 L. T. 752 C. A.

399. *Injunction granted against agent*:—Though a Foreign Government cannot be sued in England without its own consent, yet the agent of a Foreign Government may be restrained from transmitting to it securities which the bill alleged should be deposited in this country. Foreign Bondholders Corpn. *v.* Pastor (1874) 23 W. R. 109.

400. *Service Ambassador*:—R. S. C. 1875, O. 2, r. (4). Application was made on behalf of plaintiff, representing Turkish bondholders, for leave to issue the writ and to serve a copy of it on the Turkish Ambassador, with a view to giving the Sultan of Turkey, who was named defendant, notice of the proceedings:—*Held* (1) the Sultan could be named as a party if he desired it, though the writ would be inoperative against him; (2) leave for service on the ambassador must be refused as being contrary, Section 4. Foreign Sovereigns and Governments: (*Sub-section* 2 *B.* (*c*) *&* (*d*). *Sections* 5 *to* 16 *incl.*) To the comity of nations, Stewart *v.* Bank of England (1876) W. N. 263.

(*d*) Questions of status.

401. *Time when immunity attaches*:—Time of action brought or plea pleaded. To an action on an annuity deed defendant pleaded that at the time of making the deed he was reigning Sovereign Duke of Brunswick and Luneberg; that the deed was made by him within his dominions; and that from the time of the making until action brought he had been and still was justly entitled to all rights, prerogatives, and privileges appertaining to him as such. On demurrer to the replication:—*Held* the plea was bad for not stating that defendant was reigning Sovereign Duke at the time of action brought or plea pleaded. *Semble;* the defence that e contract was made by defendant in character of a Sovereign

Prince would be a good plea in bar, but not a good plea to the jurisdiction: Munden *v.* Brunswick (Duke) (1847) 10 Q. B. 656; 2 New Pract. Cas. 213; 6 State Tr. N. S. 403; 16 L. J. Q. B. 300; 9 L. T. O. S. 532; 11 Jur. 801; 116 E. R. 248. S. C. Nos. 386, 391, *ante*.

Annotations:—Consd. Mighell *v.* Johore (1894) 1 Q. B. 149 C. A. Refd. Wadsworth *v.* Spain (1851) 17 Q. B. 171; London Corpn. *v.* Cox (1867) L. R. 2 H. L. 239.

402. *Territory annexed—Devolution of liabilities before annexation*:—Plaintiffs, residents in India, filed a bill against the Secretary of State for India praying that certain bonds upon which money had been lent to the then King of Oudh in 1794 by persons whom they now represented might be declared to create a charge on the revenues of Oudh, and that the Secretary of State for India might be declared liable to pay to plaintiffs the amount due on such bonds:—*Held* as the debt was not enforceable against the King of Oudh before the annexation, it was not enforceable now: Doss *v.* Secretary of State for India in Council (1875) L. R. 19 Eq. 509, 535; 32 L. T. 294; 23 W. R. 773.

Annotations:—Folld. Reiner *v.* Salisbury (1876) 2 Ch. D. 378. Refd. Companhia de Mocambique *v.* British South Africa Co.; De Sousa *v.* British South Africa Co. (1892) 2 Q. B. 358 C. A.; Cook *v.* Sprigg (1899) A. C. 572 P. C.; West Rand Central Gold Mining Co. *v.* R. (1905) 2 K. B. 391.

403. *Sovereign Prince—Also British subject*:—General demurrer to a bill filed by the Duke of Brunswick against the King of Hanover as Duke of Cumberland and a British subject residing within the jurisdiction claiming an account of property received by defendant as plaintiff's guardian under a settlement effected in 1833 by William IV., and the reigning Duke of Brunswick, purporting to act as the legitimate agnate of plaintiff and in pursuance of authority entrusted to them by a decree of the German Diet:—*Held* (1) (by H. L.) a Foreign Sovereign coming to England cannot be made responsible in the courts here

for acts done by him in his Sovereign character in his own country, even though such Sovereign be also a British subject residing within the jurisdiction; (2) (By Lord Langdale, M.R., no opinion being expressed in H. L.) such a Foreign Sovereign, being subject of Queen, is liable to be sued in this country in respect of any acts done by him as a subject, but acts done out of this realm, and doubtful acts, are to be attributed to his Sovereign character, and it is for plaintiff to show that the act complained of was done in the character of a subject: Brunswick (Duke) *v.* Hanover (King) (1848) 2 H. L. Cas. 1; 9 E. R. 993 H. L. S. C. No. 385, *ante*.

Annotations:—Apprvd. De Haber *v.* Portugal (1851) 20 L. J. Q. B. 488 Refd. Gladstone *v.* Musurus Bey (1862) 1 Hem and M. 495; Cox *v.* London Corpn. (1863) 2 H. & C. 401 Ex. Ch.; Smith *v.* Weguelin (1869) L. R. 8 Eq. 198; Lariviere *v.* Morgan (1872) 26 L. T. 339; The Charkieh (1873) L. R. 4 A. & E. 59; Hettihewage Siman Appu *v.* Queen's Advocate (1884) 9 App. Cas. 571 P. C.; Mighell *v.* Johore (1894) 1 Q. B. 149 C. A.; South African Republic *v.* La Compagnie Franco-Belge du Chemin de Fer du Nord (1898) 1 Ch. 190. Mentd. London Corpn. *v.* Cox (1867) L. R. 2 H. L. 239; The Parlement Belge (1880) 5 P. D. 197 C. A.; Musurus Bey *v.* Gadban (1894) 1 Q. B. 533.

404. *Though under protectorate*:—Mighell *v.* Johore Nos. 387, 394, *ante*; No. 406, post.

For full anns., see S. C. No. 394, *ante*.

405. *Under Suzerainty*:—Statham *v.* Statham and Baroda No. 388, *ante*; No. 408, post.

406. *Evidence of status—Certificate from Foreign or Colonial Office conclusive*:—A certificate from the Foreign or Colonial Office is conclusive as to the status of a Foreign Sovereign. Mighell *v.* Johore, Nos. 387, 394, 404, *ante*.

Annotation:—Follid. Foster *v.* Globe Venture Syndicate (1900) 1 Ch. 811.

For full anns. see S. C. No. 394, *ante*.

407. The Court takes judicial cognizance not only of the status, but also of the boundaries of Foreign States, and if in doubt will apply for information to the Secretary of State for Foreign Affairs, whose reply is conclusive: Foster *v.* Globe Venture Syndicate, Ltd. (1900) 1 Ch. 811 ; 69 L. J. Ch. 375 ; 82 L. T. 253 ; 44 Sol. Jo. 314.

408. *Certificate from India Office* :—In the case of an Indian Sovereign Prince a certificate from the India Office is accepted as evidence of his status: Statham *v.* Statham and Baroda, Nos. 388, 405, *ante.*

409. *Other evidence* :—In considering the international status of the Khedive of Egypt, the Court may inquire into the general history of the Government of Egypt, the firmans of the Porte, and European treaties concerning the relations between Egypt and the Porte and may obtain direct information from the Foreign Office : The Charkieh, No. 393, *ante.*

Annotations :—Refd. The Parlement Belge (1880) 5 P. D. 197 C. A.; Foster *v.* Globe Venture Syndicate (1900) 1 Ch. 811.

For full anns., see S. C. No. 393, *ante.*

"*The Digest of English Case Law*," EDITED BY J. MEWS, Vol. VIII.

INTERNATIONAL LAW.

1. Sovereign States, their Rulers and Officers.
   - *a.* Sovereign States and Sovereigns, 178.
   - *b.* Officers.
     1. Ambassador.
     2. Other Officers.
   - *c.* Consul.

Sovereign States, their Rulers and Officers.

a. Sovereign States and Sovereigns.

Sovereignty—Definition :—In considering what power and jurisdiction is conceded to Great Britain within the territories

of a Foreign State, it must be borne in mind that in transactions, whether political or mercantile, difference subsists between oriental and Christian States: Papayanni *v.* Russian Steam Navigation and Trading Co., or the Loconia, 11 Moore P. C.

No State can claim jurisdiction as a matter of right within the territorial limits of another Independent State. *Ib.*

Between two Christian States all claim to jurisdiction of any kind or exemption from jurisdiction must be founded on treaty, or engagements of similar validity; but the same strict forms would not be required in the intercourse between a Christian and an oriental nation. Any mode of proof by which it was shewn that a privilege is conceded be sufficient for the purpose. *Ib.*

Consent may be expressed in various ways; by constant usage, permitted and acquiesced in by the authorities of the State; active assent or silent acquiescence, where there is full knowledge. *Ib.*

The Ottoman Government has acquiesced in allowing to the British Government within the Ottoman dominions jurisdiction between British subjects and the subjects of other Christian States. *Ib.*

Political treaties between a Foreign State and subjects of the Crown of Great Britain acting as an Independent State under powers granted by Charter and Act of Parliament are not a subject of Municipal jurisdiction; therefore, a bill founded on such treaties by the Nabob of Arcot, against the East India Company, was dismissed: Carnatic (Nabob) *v.* East India Co., 2 Ves. J. 56. And see Glasse *v.* Marshall, 15 Sim. 71; 15 L. J. Ch. 25.

Sovereignty—How Proved:—A judicial court cannot take notice of a foreign government, not acknowledged by the government or country in which that Court sits; and the fact of acknowledgment is matter of public notoriety. Berne (City) *v.* Bank of England, 7 Ves. 347; R. R. 218.

A certificate from the foreign or colonial office as the case may be is conclusive as to the status of Sovereignty: Mighel *v.* Johore (Sultan) 63 L. J.; Cp. Yrissarri *v.* Clement, 3 Bing. 432.

Immunity from Process—In General :—A Foreign Sovereign coming to England cannot be made responsible in the Courts there for acts done by him in his own country and elsewhere abroad even if he is also a British subject who has taken the oath of allegiance and is in England exercising his rights as such subject: Brunswick (Duke) *v.* Hanover (King) 2 H. L. Cas. 1. Affirming 6 Beav. 1.

The Courts of this country have no jurisdiction over an independent Foreign Sovereign unless he submits to the jurisdiction. Mighell *v.* Johore (Sultan) 63 L. J. Q. B. 593.

An action cannot be maintained in any English Court against a foreign potentate for anything done or omitted to be done by him in his public capacity as representative of the nation of which he is the head, and no English Court has jurisdiction to entertain any complaints against him in that capacity: De Haber *v.* Portugal (Queen) Wadsworth *v.* Spain (Queen) 17 Q. B. 171.

The Courts of this country cannot interfere with the prerogative rights of the Sovereign of another country; and where therefore a concession had been granted by the Turkish Government for the formation of a company for the purpose of issuing notes in Turkey and the Turkish Government had granted another company with similar privileges :—*Held* that although the proceedings of the second company in England might be in derogation of the rights and privileges granted by the contract with the first company yet as it would be an interference with the Sovereign rights of the Government of Turkey the Court would not interfere by injunction to certain the proceedings of the second company: Gladstone *v.* Ottoman Bank, 1 H. & M. 505.

Action against—Procedure—Lex fori :—Where a Foreign Prince is defendant he stands on the same footing with ordinary suitors as to the rules and practice of the Court. Spain (King) *v.* Hullet 1 Cl. & F. 333.

To attempt to make a Foreign Sovereign or State amenable to the jurisdiction of our Courts would be offensive to the spirit

and principles of International Law, and therefore a Foreign Sovereign or State cannot be served with a writ or other process of our courts. The only apparent exceptions to this rule are :—(1) where a Foreign Sovereign or State has come into our Courts to seek redress against a defendant, in which case the defendant may assert any claim he has by way of counter-claim or cross-action in order that complete justice may be done; (2) where both the plaintiff and a Foreign Sovereign or State have claims upon funds in the hands of third persons within the jurisdiction of the English Courts; in which case the Foreign Sovereign or State may be joined as a defendant in order to be enabled to assert any claim to the funds in question. Strousbery *v.* Costa Rica (Republic) 44 L. T. 199.

Pleading :—In a suit against a Sovereign Prince who is also a subject, the bill ought, upon the face of it, to shew a cause rendering the Sovereign Prince liable to be sued as a subject. Brunswick (Duke) *v.* Hanover (King), *supra.*

Action on a deed:—Plea to the jurisdiction because the defendant at the time of marking the deed was a Sovereign Prince that the deed was made by him within his dominions and that at the time of commencement of the action he was and still is entitled to all the rights, prerogative and privileges appertaining to him as such and that by reason thereof he ought not to be compelled to answer before any Court whatsoever :—*Held* that the plea was bad from time of commencing for not stating that he was a Sovereign Prince at the time of commencing the action or of plea pleaded. Munden *v.* Brunswick (Duke), 10 Q. B. 656.

Plea by the East India Company to a bill for an account filed by the Nabob of Arcot that by charters confirmed by Act of Parliament they had certain powers by virtue of which the acts were done overruled; as it did not set forth the contents of the charters and Acts of Parliament, and shew what Court had the proper jurisdiction. Carnatic (Nabob) *v.* East India Co., 3 Bro. C. C. 292. And see 1 Ves. J. 371.

Submission to jurisdiction—Appearance :—A Foreign Sovereign Prince who was also an English Peer was made defendant to a suit served with a letter missing. The Lord Chancellor refused to recall it. The defendant then appeared and filed a demurrer for want of jurisdiction :—*Held* first that the Lord Chancellor had not decided that the defendant was liable to the jurisdiction of the Court and secondly that the defendant had not by appearing waived any defence to the bill. Brunswick (Duke) *v.* Hanover (King), *supra.*

Effect of :—A Foreign Sovereign who for the purpose of obtaining his property submits to be made a defendant in an action does not thereby lose his rights. Vavasseur *v.* Krupp, 9 Ch. D. 351.

Where a foreign government applies here for the appointment of new trustees of a fund they are treated as only having submitted to jurisdiction as regards matters properly raisable in that action and consequently a counter-claim for damages for libel will be struck out. South African Republic *v.* La Compagine France-Belge, 66 L. J. Ch. 747.

Action of Private individual:—Submission to the jurisdiction cannot take place until the jurisdiction is invoked. The fact that a Foreign Sovereign has been residing in England and has entered into a contract thereunder an assumed name does not amount to a submission to the jurisdiction so as to render him liable to be sued in English Courts for the breach of such contract. Mighell *v.* Johore (Sultan), 63 L. J. Q. B. 593.

Action by Foreign Sovereign:—A Foreign Sovereign Prince may sue in this country in equity as well as at law in his political capacity. Spain (King) *v.* Hullet, 1 Cl. & F. 333.

Parties :—To a bill filed by the charge de' affaires of the Brazilian Government in this country in his own name to restrain judgment creditors from issuing execution against certain furniture upon which a sum of money had been advanced by the Brazilian Government secured by an unregistered bill of sale of the furniture a demurrer on the ground that the minister could not sue in his own name was allowed. Penedo (Baron) *v.* Johnson, 29 L. T. 452.

Procedure—Lex fori :—To attempt to make a Foreign Sovereign or State amenable to the jurisdiction of our Courts would be offensive to the spirit and principles of International Law, and therefore a Foreign Sovereign or State cannot be served with a writ or other process of our Courts. The only apparent exceptions to this rule are :—(1) where a Foreign Sovereign or State has come into our Courts to seek redress against a defendant, in which case the defendant may assert any claim he has by way of counterclaim or cross-action in order that complete justice may be done ; (2) where both the plaintiff and a Foreign Sovereign or State have claim upon funds in the hands of the third persons within the jurisdiction of the English Courts in which case the Foreign Sovereign or State may be joined as a defendant in order to be enabled to assert any claim to the funds in question. Strousbery *v.* Costa Rica (Republic), 44 L. T. 199.

A Foreign Sovereign may sue in this country both at law and in equity, and if he sues in equity he submits himself to the jurisdiction and cross-bill may be filed against him, which he must answer on oath ; but a Foreign Sovereign does not, by filing a bill in Chancery against *A.*, make himself liable to be sued in that Court for an independent matter by *B.* Brunswick (Duke) *v.* Hanover (King), 2 H. L. Cas. 1 ; Prioleau *v.* United States, 36 L. J. Ch. 36.

A Foreign Prince who comes voluntarily as a suitor of Law of England becomes subject as to all matters connected with that suit to the jurisdiction of a Court of Equity. Rothschild *v.* Portugal (Queen), 3 Y. & C. 594.

Staying action till Appointment of Person to give Discovery :—The proceedings in an original suit by a Foreign government were stayed until the plaintiff in that suit had given the name or names of persons who could be made defendant or defendants in a cross-suit by the same parties against the Foreign government for the purpose of making up on oath the discovery required : Peru (Republic) *v.* Weguelin, 44 L. J. Ch. 583.

A defendant to a suit brought by a Sovereign State or

corporation has no right to stay of proceedings in the original suit until a person selected by him for the purposes of discovery, and made a co-defendant to a cross suit appears to such cross-suit. Costa Roca (Republic) *v.* Erlanger, 45 L. J. Ch. 145.

Transactions between:—Transactions of Independent Sovereign States between each other are governed by other laws than those which Municipal Courts administer. Such Courts have neither the means of decreeing what is right nor the power of enforcing any decision which they may make: Secretary of State for India *v.* Kamachee Boye Sahaba, 13 Moore P. C. 22.

A bill filed by Charles, ex-Duke of Brunswick, against the King of Hanover (a subject of this realm) stated that by a decree of the Germanic Diet followed by a declaration of his Agnity he had been deposed and his brother appointed successor and that by an instrument signed by the reigning Duke and by William IV and his brothers the Duke of Cambridge had been appointed guardian of the plaintiff's fortune and the guardianship " was he legally established in Brunswick where it was to have its locality." That on the death of William IV the King of Hanover was appointed guardian and possessed himself of the private property of the plaintiff. The bill alleged that the instrument was void and prayed a declaration to that effect and for an account. *Held* that the alleged acts under the instrument were not such as rendered the defendant liable to be sued or subject to the jurisdiction of the Court. Brunswick (Duke) *v.* Hanover (King), 2 H. L. Cas. 1.

"*Smith's Leading Cases*," Vol. I.

MOSTYN *v.* FABRIGAS.

Rights and Liabilities of Sovereign Princes.

With regard to the rights and liabilities of Sovereign Princes themselves to sue and be sued in the Courts of this country, the general rule deducible from the cases is that in respect of acts of State they can neither sue nor be sued. Personally a Foreign Sovereign cannot be sued at all unless indeed he has in

fact submitted to the jurisdiction. Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149; and though it was said in the Charkieh, L. R. 4 A. & F. 59, that in some cases proceedings *in rem* might be instituted against his property in this country, the dicta to this effect were overruled by the C. A. in The Parlement Belge, 5 P. D. 197. In certain cases a petition of right may be instituted by a British subject against the Crown; "but it seems clear to us," said Lord Coleridge, delivering the judgment of the C. A. in Rustomjee *v.* The Queen, 2 Q. B. D. 69, "that in all that relates to the making and performance of a treaty with another Sovereign the Crown is not and cannot be either a trustee or an agent for any subject whatever." "The duty," His Lordship added "if the English Sovereign in such a case was a duty to do justice to her subjects according to the advice of her responsible ministers; not the duty of an agent to a principal, or of a trustee to a Cestui Que Trust. If there has been a failure to perform that duty which we only suggest for the sake of argument it is one which Parliament can and will correct; not one with which the Courts of Law can deal."

Immunity of Sovereign Princes from Proceedings in Foreign Courts.

The liability of Sovereign Princes to be sued in the Courts of foreign countries underwent a full discussion in Duke of Brunswick *v.* The King of Hanover, 6 Beav. 1, where the defendant was at once a King of one country and a subject of that in which he was sued. Lord Langdale in a judgment which exhausts the subject stated his opinion: (1.) That the King of Hanover was "exempted from all liability of being sued in the Courts of this country for any acts done by him as King of Hanover or in his character of Sovereign Prince"; but that "being a subject of the Queen" he was "liable to be sued in the Courts of this country in respect of any acts and transactions done by him, or in which he may have been engaged as such subject." (2.) That "in respect of any act done out of this realm, or any act as to which it may be doubtful whether it ought to be attri-

buted to the character of Sovereign or to the character of subject." (3.) That in a suit in the Court of Chancery against a Sovereign Prince, who is also a subject, "the bill ought upon the face of it to show that the subject-matter of it constitutes a case in which a Sovereign Prince is liable to be sued as a subject." And the decree allowing the demurrer in that case to a bill seeking an account against the King of Hanover as guardian of the plaintiff to which office the King upon his attaining the throne of Hanover had been appointed under an arrangement springing out of the disposition of the Duke pursuant to a decree of the Germanic Diet in 1830, was affirmed by the H. L. on appeal (2 H. L. C. 1) on the ground that a Sovereign is not liable to be sued in respect of matters of State.

BRUNSWICK *v.* HANOVER.

In Nabob of Arcot *v.* East India Company, 2 Ves. 56, Court of Chancery refused to entertain a suit arising out of transactions of State between Sovereign Powers though the defendants were subject of this country.

MUNDEN *v.* BRUNSWICK.

In Munden *v.* Duke of Brunswick, 10 Q. B. 656, it was held to be no plea to an action on an annuity deed that the defendant was a Sovereign Prince at the time it was made without showing either that it was an act of State or that the defendant retained his Sovereign character at the time of action brought. "But the decision assumes that if the plea had been drawn otherwise and had contained all the material allegations, it would have been a good plea," Per Wills, J, Mighell v. Sultan of Jahore (1894) 1 Q. B. 149, 156.

WADSWORTH *v.* QUEEN OF SPAIN.

In Wadsworth *v.* Queen of Spain, 17 Q. B. 171, and De Haber *v.* Queen of Portugal, Id. 196, proceedings in foreign attachment instituted by holders of Spanish and Portuguese bonds against property belonging to those Sovereigns in their public capacity

were stayed by prohibition. In support of the general principle of the immunity of Sovereign Princes and of their property in respect of acts of State, see further Gladstone *v.* Ottoman Bank, 32 L. J. Ch. 228; Gladstone *v.* Musurus Bey, Id. 166; Smith *v.* Weguelin, 8 Eq. 198; Doss *v.* Secretary of State for India, 19 Eq. 509.

THE CHARKIEH.

The Parlement Belge.

In the Charkieh, L. R. 4 A. & E. 59, Sir R. Phillimore elaborately discussed the subject of the immunities of Foreign Princes in this respect and laid down that the Courts of this country have jurisdiction to entertain proceedings instituted *in rem*, though the property be that of a Foreign Sovereign, and in some cases it would seem even though such property may be "of a public character as for instance a ship of war"; and further that a Sovereign may by assuming the character of a trader waive in respect of such trading the privilege which he enjoys generally as a Sovereign and render himself liable to the jurisdiction of an English Court. The Queen's Bench refused to interfere in this case by prohibition to the Court of Admiralty; The Charkieh belonged, L. R. 8 Q. B. 197. The above dicta, however, were unnecessary to the decision, as Sir R. Phillimore further held that the Khedive of Egypt to whom the Charkieh belonged was not a Foreign Sovereign as to be entitled to the privilege claimed. And in the Parlement Belge, 5 P. D. 197, the C. A. after full consideration overruled them and held that Foreign Sovereign enjoyed the same immunity from proceedings *in rem* as from actions *in personam* and that their property is equally privileged in this respect whether ships of war or trading vessels. The subject is very fully discussed in the judgment delivered in the case by Brett, L.J. A ship, which is the property of the Crown, cannot be arrested or proceeded against in an action *in rem* for salvage: Young *v.* S.S. Scotia (1903) A. C. 501. Nor can a ship belonging to a Foreign Sovereign be arrested in an action for damage by collision. The

Jassy (1906) P. 270 where notwithstanding appearance being entered the action was dismissed.

MIGHELL v. JOHORE.

In Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149, it was held that a Foreign Sovereign who whilst he was residing in this country had as a private individual and under an assumed name agreed to marry the plaintiff could not be sued for a breach of agreement. It was contended that by assuming the character of a private individual he had waived his rights as a Sovereign and rendered himself subject to the jurisdiction. But it was held in the words of Lopes, L.J., that "the only way in which a Sovereign can submit to the jurisdiction is by a submission in the face of the Court as, for example, by appearance to a writ."

STATHAM *v.* STATHAM AND THE GAEKWAR OF BARODA.

In Statham *v.* Statham and the Gaekwar of Baroda (1912) p. 92, the Gaekwar of Baroda was made co-respondent to a divorce petition, but on a certificate from the Indian Office being produced showing that he was a Sovereign Prince his name was struck out.

Exceptions to the rule prohibiting Proceedings against Sovereigns and States.

In Strousberg *v.* Republic of Costa Rica, 29 W. R. 125, James, L.J., after stating that "it is violation of the respect due to a Foreign Sovereign or State to issue the process of our Courts against such Sovereign or State," mentioned two exceptions if they can be called exceptions to this rule. First that, where a Foreign Sovereign or State comes into the Courts of this country for purpose of obtaining some remedy then by way of defence to that proceeding the person sued here may file a cross claim against that Sovereign or State for enabling complete justice to be done between them. (See also Per Bargrave Deane, J. Statham *v.* Statham (1912) at p. 94). Secondly, he referred to "the case in which a Foreign Sovereign may be named as a

defendant for the purpose of giving him notice of the claim which the plaintiff makes to funds in the hands of a third person or trustee over whom this Court has jurisdiction and who alleges that the Foreign Sovereign has also some claim upon the funds in question." "These," added his Lordship, "are the only exceptions."

Foreign Sovereign may sue here for Private Wrongs? Not for Invasions of his Prerogative.

In the case of a suit by a Foreign Sovereign in amity with us although the Foreign Sovereign is entitled to sue in our Courts for wrongs done to him by English subject without authority from the English Government in respect of property belonging to him either in his individual or his corporate capacity, yet he cannot maintain a suit here for invasions of his prerogative as Reigning Sovereign. See the judgments and the cases collected in Emperor of Austria *v.* Day, 30 L.J. Ch. 690; King of Portugal *v.* Russell, 31 L. J. Ch. 34; Prioleda *v.* U. S. of America, 2 Eq. 659; U. S. of America *v.* Wagner, 2 Ch. 582; U. S. of America *v.* McRae, 8 Eq. 69. The Sovereign of a Foreign State is not necessarily the only person who can sue here in respect of the public property or interests of that State, *e.g.*, a Minister of the Foreign State may be the proper person to sue: Yzquierdo *v.* Clydebank Co. (1902) A. C. 524.

Proof of Status.

The Court takes judicial cognizance of the status and boundaries of Foreign States and if in doubt will accept information given by the Foreign Colonial or India Office as conclusive: Mighell *v.* Sultan of Johore (1894) 1 Q. B. 149; Foster *v.* Globe Venture Syndicate (1900) 1 Ch. 811; Statham *v.* Statham (1912) p. 92; The Jassy (1906) p. 270.

Printed by E. G. Pearson at the Times Press, Bombay, and published by N. G. Deo, Kolhapur—134'21.